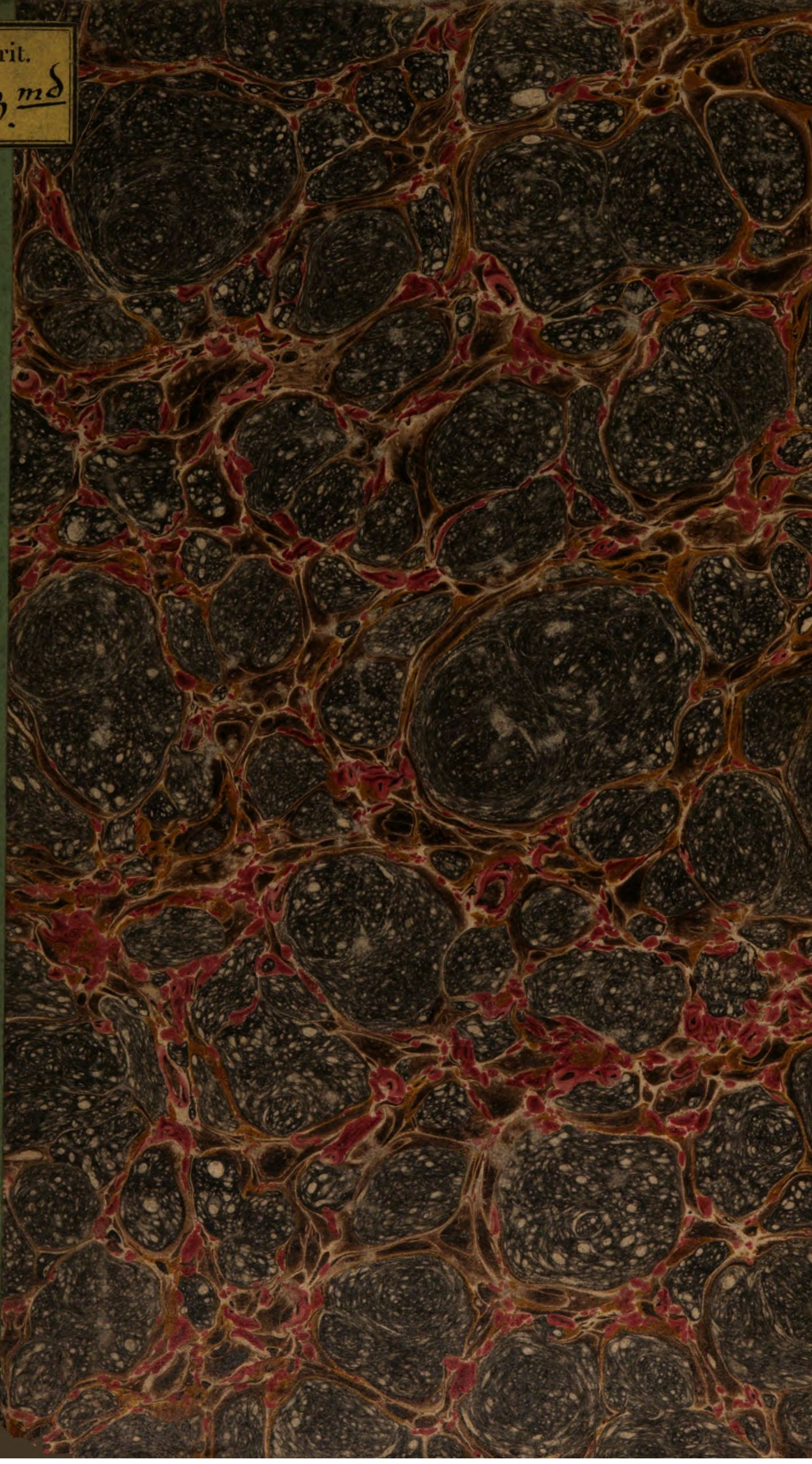


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LORD BROUGHAM DISPLAYED:

INCLUDING

I. BOA CONSTRICTOR, *alias* HELLUO CURIARUM;

II. OBSERVATIONS

ON THE

BANKRUPTCY COURT BILL,

NOW RIPENED INTO AN ACT;

III. EXTRACTS FROM PROPOSED CONSTITUTIONAL CODE.

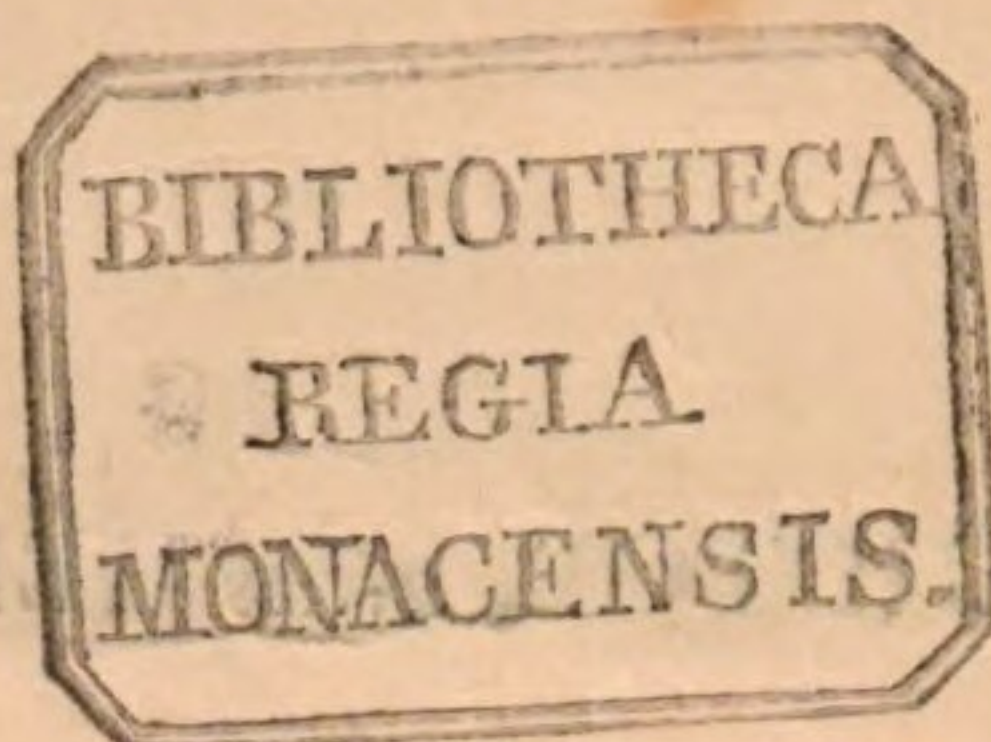
By JEREMY BENTHAM.

LONDON:

PUBLISHED BY ROBERT HEWARD,

AT THE WESTMINSTER REVIEW OFFICE, 113 STRAND.

1832.



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LONDON:

PUBLISHED BY ROBERT NEWLAND,

AT THE WESTMINSTER REVIEW OFFICE, THE STRAND.

1832.

PREFACE.

By the *Boa Constrictor*, alias *Helluo Curiarum*, is meant, as will be seen, the declaredly-determined author of a measure for the strangling and swallowing up of the two Courts styled the *Vice-Chancellor's* and the *Master of the Rolls's*, into the Chancery Court. To place it—in the manner that will be seen—in front of, or so much as to give insertion to it into, this publication, formed no part of the original intention. The only publication originally intended, was that of which the Bankruptcy Court is the subject-matter. But the closer the scrutiny into that measure became, the more deeply did I become impressed with the painful persuasion, that in a man in whom for so long a course of years I have had the honour and happiness to possess a familiar friend, it was in conclusion my unhappy lot to behold an adversary—and that an irreconcilable one—an adversary, and to what? To Law Reform—to that all-important undertaking, to which, from boyhood, the whole of my long life has been devoted. The consequence was, that, in my view, so long as he continued in the all-powerful situation which he now occupies, whatsoever hopes I had ever entertained of witnessing a consummation so devoutly to be wished, could not but remain in a state of extinction: and that, with all the feelings of a friend in relation to him, I saw no choice but acting in relation to him as I am hereby doing—and, alas! in so harsh a way—the part of an enemy,—the exclamation *Et tu, Brute!* all the while sounding, as it were, in my ears.

This determination being taken, the prefixing the shorter paper to the longer one presented itself as a sort of preparatory measure, that might be conducive to the end in view.

As to the measure more particularly here in question: from first to last, to see the Bill thrown out has never formed any part of my wishes. Two results I saw included in it;—the death of the existing state of things in relation to this part of the judicial establishment, with its procedure, and the birth of a new one: in relation to the first, my wishes were in entire accordance with those of my Noble Friend; in the other alone consisted the difference.

Throughout the whole course of my labours, I believe that one rule has, with undeviating adherence, been conformed to by me—be the institution what it might, never to engage in any such attempt as that of pulling it down, but for the purpose, and with the endeavour, to raise up something that to me seemed better in the room of it; of the observance of this rule exemplification will, on the present occasion, be seen under the head of *Amendments*, in the first part of these Observations, p. 20.

The smallness of the type had for its cause the intention of making use of the letter-post for the conveyance of this tract: little did I then think of the length to which it was destined to be drawn out.

Things left undone that ought to have been done—things done that ought not to have been done,—to these two heads will be found referable the charges here made against the institution, the effects of which are now beginning to show themselves: among the things left undone, consigning to one and the same judicatory, the business performed by the Court called the *Bankruptcy Court* and the Court called the *Insolvency Court*; that is to say, under the judiciary establishment as at present constituted, with its system of procedure: for under the system which I have ventured to propose, suits of all sorts, without any exceptions worth particularizing, would be taken cognizance of by a set of the same single-seated judicatories, proceeding according to the same simple, natural, untechnical, quasi-domestic system of procedure. In the publication intituled *Justice and Codification Petitions*, may be seen a slight sketch of it. As to the things which in my notion of the matter ought not to have been done, to hold up to view a part of them, nor yet more than a part of them, is the business of the ensuing pages.

BOA CONSTRICTOR,

ALIAS

HELLUO CURIARUM:

OBSERVATIONS ON THE “RESOLVED-ON” ABSORPTION OF THE
VICE-CHANCELLOR’S COURT, AND THE MASTER OF THE
ROLLS’ COURT, INTO THE LORD HIGH
CHANCELLOR’S COURT.

A *Boa Constrictor*, of the first magnitude, appropriately wigged and gowned, crushing in his embrace the bodies, and extinguishing the life, of their two Honours, the Vice-Chancellor and the Master of the Rolls, both of them also appropriately wigged and gowned—no bad subject this for the graver of a *Cruikshank*. All pleasantry apart, I cannot but felicitate those whose hard lot it is to become suitors in equity, at the prospect which such a change presents to view, one stage of appeal at least, and perhaps in some cases two, made to evaporate. Of this halcyon state of things it seems to me that I see a glympse; may it not prove a phantasmagoric one!

So much for what the Lord Chancellor calls his “resolved-on” *arrangement*. But an arrangement is one thing: a principle on which that same arrangement is grounded, is another: by one and the same person the one may be approved of, the other disapproved of.

“*Number in an Office*”—of these words is formed the title of Section 3 of Chapter ix, intituled MINISTERS COLLECTIVELY, in my *Constitutional Code*: a proposition I have there advanced is that—exceptions excepted (and rare indeed, if any, are the exceptions)—be the department what it may, *single-seated* should be every office in that department.*

* The Department then and there in question was the Administration Department.

Single-seated? for what reason? Answer—For many reasons: but the principal one, and the most appropriate of them all, stands expressed by the single word *responsibility*: *responsibility*—itself a host of reasons.

“*Number in a Judicatory*”—Of these words is formed the title of Section 5 of Chapter xii, intituled JUDICIARY COLLECTIVELY, in that same Code: in that Section, to the several arguments which, in support of single-seatedness, had been applied to the case of the Administration Department, are added others which presented themselves to me as applying in an exclusive manner, or with peculiar force, to the Judiciary Department.

To these *reasons* (of which further on) I have the mortification of finding opposed, the *authority* of the aforesaid Noble and Learned Lord, as displayed in the string of dictums stated in the *Morning Chronicle* of the 2d of this instant September, as having been delivered on the occasion of an announced absorption of the Master of the Rolls’ and Vice Chancellor’s into the Lord Chancellor’s Court: which said oracles of our said *Magnus Apollo* are in the words following; that is to say—“There are two or three branches of Judicature in which the presence of three Judges is infinitely better than that of one.

1. “First, where conflicting *facts* are to be discussed or conflicting *evidences* to be heard; a *Jury* is perhaps the *best forum* for such a case; a *single Judge* perhaps the worst: but *three men*, with minds *variously constituted*, are much more likely to come to a *satisfactory* conclusion than a *single individual*.

2. “The next is—where *anything like discretion* is to be exercised, either in awarding *damages* or saying what *costs* are to be paid, which is often a very important and not unfrequently difficult and delicate inquiry, as too many cases are brought and kept up merely for the sake of the costs. The duty of the Judge then is somewhat like that of assessing damages; and in the exercise of such discretion it is better to have three Judges than one.

3. “Last of all, where there are great and difficult and important points of *law* and equity to be settled, it is much more satisfactory to *suitors* and to the *profession* which cultivates the sciences, to have that law considered and *settled* by more Judges than one.

“These then” (concludes his Lordship) “are the reasons which principally move me to the adoption of the *resolution* which I have taken.”

There we have his Lordship’s dicta.

For my part, my work intituled “Constitutional Code ;

being," as the title goes on to say, "for the use of all nations and all governments entertaining liberal opinions;" and, for the support and elucidation of the proposed enactive matter, the said work presenting throughout a correspondent quantity of *ratiocinative* matter; it would have been no small satisfaction to me, to have seen the truth of my arguments, which, as above, are delivered in support of *single-seatedness* in Judicature, subjected to the scrutiny of so enlightened a mind, and to have given to the work in question the benefit of his Lordship's observations on the one side or the other, or on both: seeing that the questions are not a few, as to which, with perfect sincerity, by one and the same man (as Sir Roger de Coverley was wont to say) "much may be said on both sides." This satisfaction I might have had, had his Lordship been pleased to add them to the "*pap*" which he was pleased to *say pray for*, and take from a teaspoon of mine, when sitting on my lap, at the hermitage from which I write: those of the said arguments I mean which apply to the case of the Administration Department, that part of the work being then already in print; to which arguments he might have added moreover those which apply exclusively to the case of the Judiciary Department: for though not yet in print, they were even then in manuscript; and, were it only for the chance, howsoever feeble, of their *now* receiving that honour, I have some thoughts of sending them to the press immediately, and adding them to this paper, before I have done. Speaking of those same wished-for observations, I take the liberty of supposing them as having place on the one side, on the other, or on both.

Unfortunately, neither in any one of the above-mentioned *dicta*, nor in all of them put together, can I find any portion of that sort of matter called *ratiocinative*, which could with propriety be made to occupy a place in that same work of mine: for, for the support of his Lordship's proposed enactments, *ratiocinative* has, in *ipse-dixitical* matter, found, on almost every occasion, if not a more *instructive*, at any rate a more compendious, and, to the furnisher at least, a much more commodious substitute.

Now then for the three cases in which, according to his Lordship, three judges are better than one.

Case I. "Conflicting facts to be discussed or conflicting evidence to be heard." Of the sorts of cases for which three judges are, according to him, better than one, this is the first-mentioned. But here comes a puzzle. Good for this case as are three Judges, another *forum* he describes and points to, as being for this same case still better: nay, so much better as to be the best possible. And this other

forum—what is it? even his Lordship's old favourite "*a jury*." And of what sort of men is the population of that same *forum*, according to his Lordship's declared conception of it, composed? Of "any twelve men," so they be "*good*" ones, and "put into a box:"—"no EXAGGERATION" here; so his Lordship was pleased to assure us. Such, after the most mature deliberation, was his Lordship's opinion, as declared on the 7th of February 1828, in and by his self-published speech of that date, p. 5*.

Now then comes the puzzle. This *forum* being the perfection of aptitude—of appropriate aptitude, with relation to this very case,—why not on the occasion in question take it in hand and employ it, instead of the *three-seated* judicatory—a tribunal which, *three-seated* as it is, yet, its seats being in numbers no more than a quarter of those of the *forum*, yields still to it in point of this same aptitude?

In the course of the tract intituled "Observations on the Bankruptcy Court Bill," those same arguments may perhaps be given at length: meantime, any something being on this occasion better than nothing, a sort of abridgment of them may be seen in the proposition following:—

As to the conduciveness of *single-seatedness* to the ends of justice, comparison had with *many-seatedness*, no otherwise can any estimate of it be formed, than by the degree of *appropriate aptitude*, in all its branches, which in the two cases is likely to have place on the part of the Judge or Judges, relation had to the functions of their office. For determining on which side the aggregate of such appropriate aptitude is likely to have place in the greatest degree, let attention be applied to the following propositions:

1. As in the case of any other functionary, so in that of a Judge. The state of the *law* being given,—for every practical purpose, appropriate *moral* aptitude must be considered as exactly proportioned to the strictness of his dependance upon *public* opinion:

2. Singly-seated, a Judge finds not any person, on whom he can shift off the whole, or any part, of the imputation, of a mischievous exercise given to any of his functions. Not so, when he has a colleague.

3. No person does he find to share with him in the weight of that odium.

4. No persons does he find in the same situation with

* "And in my mind (said his Lordship) he was guilty of no error,—he was chargeable with no exaggeration,—he was betrayed by his fancy into no metaphor, who once said, that all we see about us, King, Lords, Commons, the whole machinery of the State, all the apparatus of the system, and its varied workings, end in simply bringing twelve good men into a box."

himself, engaged by the conjunct ties of self-regarding interest and sympathy, to support him under the apprehension of it, by the encouragement given by their countenance.

5. He has it not in his power, without committing himself, to give to an indefensible exercise made of his functions, *half* the effect of a *vote*,—namely, by purposed *absentation* and non-participation.

6. He finds not, in the same situation with himself, any person to share with him, and in proportion draw off from him, the whole, or any part, of any lot of *approbation*, whether on the part of his superior officer, or the public at large, that may come to be attached to *extra merit*, in any shape, manifested, on the occasion of any exercise given to his functions.

7. His reputation stands altogether upon the ground of his actions. He finds not in the same situation, any person to help him, as numbers help one another, to raise a *schism* in the public,—and, by the mere force of prejudice—without *evidence*, or in spite of evidence, in relation to specific actions,—to draw after them the suffrages of the unreflecting part of it.

8. Of the quality correspondent and opposite to appropriate moral aptitude, the most mischievous effect is—disposition to exercise arbitrary power. But that which constitutes *arbitrary power* in judicature is — not the *unity* of the Judge, but his exemption from the controul of a superior, —from the obligation of assigning reasons for his acts,—and from the superintending scrutiny of the public eye.

9. The reproach of arbitrary power belongs, on all the above accounts, to the authority of many Judges, especially large bodies of Judges, in contradistinction to that of *one*.

10. The circumstances, which render plurality indispensable in sovereign legislature, do not apply to judicature.

11. So many *seats*, so many sets are there, of persons, who, by community of sinister interest, stand engaged to secure the possessor of the situation against responsibility in every shape, for delinquency in every shape. So much for appropriate moral aptitude.

12. Now as to intellectual and active aptitude.—In a singly-seated Judge, most *intelligence* is likely to be found, in so far as intelligence is the fruit of exertion.

13. A Judge, by being single, exerts himself the more from his seeing no resource but in his own powers.

14. Hence, only in the case of a singly-seated functionary can *promptitude*, or say *despatch*, be maximized.

15. A singly-seated functionary has but one opinion, and one set of *reasons*, to give.

16. No person's opinion has he to *wait* for.

17. No person has he to *debate* with, to *gain* over, or to *quarrel* with.

18. No person has he to put unnecessary *questions* to him,—to propose unnecessary *steps*,—or to necessitate useless *adjournments*.

19. All the advantages that can be expected from a multiplicity of Judges, may be insured, in a much greater degree, by a numerous *auditory*, with the addition of the whole world for *readers*, as to everything in the conduct of a Judge, that any men think worth their notice; and any advantage that can ever have happened by accident from such multiplicity can be imputed to nothing but the chance it affords for publicity.

20. The advantages, obtainable from a *plurality* of heads, independently of exertion, are needed in no more than a small number of cases; and, in proportion as they are needed, may be had by the help of *Advocates* and Courts of *Appeal*, without putting Judges more than one into the same court.

21. *To suitors*—that is to say, to persons having business at the office,—causes of *delay* are, in a large proportion of the number of individual cases, to a greater or lesser amount causes of *expence*.

22. If these principles be just, the saving they will produce in the *expence* of the establishment is prodigious. In the expence attending the collection of *taxes*—in the terms of *loans*—in the adjustment of most other plans of economy in finance, a saving of a few *units* per cent is thought a great matter; *here* it runs to *hundreds* per cent, and the *least* saving is a hundred.

Then as to *facility*.—The judicatory presents a difficulty of which the *forum* stands, or (if you please) *sits*, clear. In the judicatory a condition required is, that the *minds* of the members be, all three of them, variously constituted; and in this qualification resides the *differential character* (as the Logicians say) of the tribunal, its distinctive excellence, its sole alleged title or claim to preference. But, of this qualification how is the existence to be ascertained? there I see a knot, which, staring his Lordship in the face, cries aloud to him—“*Nay, but you must untie me.*”

Is it by identity—in the first place, of professional practice,—in the next place, of official functions? Is it by the “*viginti*,” and ever so many more than the “*viginti annorum lucubrationis*” applied by the whole fraternity of them con-

stantly, and with a more than ordinary degree of attention, to the same subject, that this same indispensable "variety of constitution" is to be produced? Uniformity, rather than the promised variety, is the effect I should have looked for from such a set of causes. Shaken out, by "the indiscriminate defence of right and wrong" carried on, through so long a course of years, by "the indiscriminate utterance of truth and falsehood," common sense and common honesty make their escape, while the remaining matter contracts in proportion, subsides and coalesces in all alike into a paste of appropriate shape and colour, as if cast in one and the same mould: insomuch that, when, after the fire of London City, gratitude hung up the portraits of the twelve judges in that case, had not magnificence been preferred to economy, one portrait might have served for all twelve: as in the *Nuremberg Chronicle*, in the list of the progenitors and descendants of Abraham, so strong (it was found) was the family likeness, that one venerable head and shoulders, was so managed as to serve, without objection, for divers generations.

Turn now to the *Jury-box*.—Here all is (as a sailor would say) *plain-sailing*. According to his Lordship, all that is here requisite is—that there be *men*—that they be *good*—that there be *twelve* of them, and that they be "put into a *box*." Sir Robert Peel requires other qualifications: one is, that they be capable of being packed: but the above is all that his Lordship requires: no need of any "variation in the constitution" of *their* minds: so far from needing it, sooner or later, full or fasting, *nolens volens*, they must be every one of them of the same mind. "Variety of constitution"—by any such property would the twelve minds be rendered the more easily liquifiable into one? Not they indeed: they would in proportion to the degree of the aforesaid variety be more intractable and insoluble.

So much as to the question between single-seatedness and many-seatedness, and in particular triple-seatedness. Now for *Judges* and *boxes*. If, after all, it be really true, that identity of habits is so surely efficient a cause of variety of constitution, a little arrangement or two there is, which I would humbly suggest for his Lordship's consideration, as promising an ulterior improvement, grounded on his own so deliberately established principles. Let him take the reverend Judges, all twelve of them, or whatever be now the number of them, and put them into a *Jury-box*, setting down the box in the Court of Chancery; and to make sure of that goodness which is the characteristic quality of a jurymen, and that nothing which appropriate learning and wisdom can

supply may be wanting, let him for this purpose borrow from Lord Tenterden the very Jury-box which has so long been diffusing its goodness through the King's Bench. As to his power for making this transference, in his own view of it, at any rate, it stands not exposed to any dispute: "I have power," (says he, accordingly)—"I have at present power to ask for the attendance of any or all the Judges of Westminster Hall."

On the other hand, if this be a little mistake of his, (for *nemo mortalium omnibus horis sapit*,) and if accordingly diversity of habits is a surer cause than identity is of variety of constitution, let him once more betake himself to his old favorites the good men and true, and set *them* down comfortably in their own box. I mean not the *Special Jurymen*: for the Squirearchy being Aristocrats are all cast in the same mould. The jurymen whom I mean are the common jurymen: for among them there will be as many different habits as there are trades.

Now as to "conflicting facts and conflicting evidence." As to this matter, a circumstance which, on the present occasion, seems somehow or other to have dropt out of his Lordship's mind, is that it is from these same conflicting facts and evidence that Judges themselves deduce their conclusions: and not only *Common Law Judges*, but even *Equity Judges*: and not only Equity Judges in general, but even his Lordship himself. Yes: even his Lordship himself. For does he not hear Bills and Answers? Does he not hear answers to interrogatories? does he not hear affidavits? And do not these same bills and answers, interrogatories, and affidavits relate to "conflicting facts to be discussed, and conflicting evidences to be heard?" I speak under correction: but really his Lordship puts one in mind of *Monsieur Jourdan*, who had been talking prose all his life long without ever being aware of it. All their official lives long, added to their professional, have all Judges—learned Judges—been in the habit of hearing and dealing with this sort of intellectual matter: a jurymen—the first day of his being put into the box—has not heard a syllable: which first day may also be the last. Here then we have on the *Bench* the maximum of experience; in the *Box* the maximum of inexperience. Here then we have a problem calling on his Lordship for solution: Required, to show the advantages, which, on this occasion (not to speak of other occasions), *inexperience* possesses over *experience*.

In the *Box*, men have the evidence elicited from them in the best shape; on the *Bench*, in three of the worst shapes it is in the power of human ingenuity to devise: namely,

affidavits, answers to bills, and answers to written interrogatories, without any answers to such questions as those same answers might suggest: the deduction depending upon, and varying in great measure in proportion to, the badness and deceitfulness of the shape: but still is it not on facts—conflicting facts—and conflicting evidence, that the adjudication is made and pronounced in the one case as well as in the other?

True it is that in the case of the Bench the conclusion is styled a *judgment* or a *decree*; in the case of the Box, a *verdict*: but what difference this denomination makes in the nature of the matter I must with all submission leave it to his Lordship to determine.

True it is, moreover, all this while, that the question—the principal question—is between Judges and Judge; not between Judges and Juries: the question, as to Juries, being blown in, by his Lordship, as it were by a *side wind*—in the form of a parenthesis. But, howsoever it may have got in, this doctrine was by far too important to be passed by unnoticed. For here may be seen—and from those same most impressive lips, the confession *Video meliora proboque, deteriora sequor*. The jury-box, with its contents, being the best machinery of the two—indeed, according to your own declared opinion, the best of all possible machineries—what, on any occasion, and this in particular, should hinder you from making use of it? Surely not any *unpopularity* that you can see in it?

Now for case the second—namely, “Where *anything like discretion* is to be exercised:” subject matters of the discretion in this case, “damages” and “costs:” operations to be performed by the light of the discretion, “awarding the damages and saying what costs shall be paid.” Thus far his Lordship.

Where anything like *discretion* is to be exercised?—This read, I fell to rubbing my eyes, and said to myself—Am I now awake? That there may be Judges who, on this or that occasion, are capable of acting without discretion is indeed conceivable enough; and perhaps his Lordship may not have any very great distance to look to find one. But, that there should be in existence any such Judge as one who, by speaking of the case in which *something like discretion* is to be exercised as being a *particular* case—should give it to be understood, that, in his opinion, by a Judge, generally speaking, neither discretion itself—no, nor so much as anything *like* discretion should be exercised,—this it is that makes me stand aghast.

The plain truth is, that this same word *discretion* is a sort

of *arrow*, which learned Judges, when in a state of conflict with one another, and in a rhetorical mood, have been seen letting fly at one another. In days of yore, *Hector* and *Achilles* were Lord Camden, Lord Chancellor, and Lord Mansfield, Lord Chief Justice:—"Discretion" (exclaimed one day Lord Camden)—"*Discretion is the law of tyrants.*" Whence came it to be so? Even from this:—namely, that something about *discretion*, and in favour of it, Lord Mansfield had been *indiscreet* enough to utter. Thereupon, as if *Achilles* had been slain, in placard types was trumpeted forth in the Whig periodicals and pamphlets of the day this *dictum* of their *Hector*, who, after all, found himself compelled to turn his back upon Seals and Bench. Discretion is the law of tyrants? Yes—and sure enough in an unguarded moment something rather approbative than otherwise of the use of discretion had dropt from the lips of the Lord Chief Justice. I say *unguarded*: for had he put before it the word *sound* there would have been nothing to lay hold of, and the bolt would not have been shot; nor, if shot, have stuck upon it.

Let me not be mistaken. No such intimation do I mean to convey as that the course my noble and learned friend means to recommend is the law of tyrants: all I mean to say is, that when employed in certain ways the word *discretion* is the word of parrots: and that, though the lip it comes from should belong to a head which had ever so full bottomed a wig over it, no determinate idea—no idea capable of entering into the composition of any tolerably effective argument—would come in company with it. So much for the word *discretion*. Meantime, on the present occasion, what is at the bottom of it? If anything, it is this. When the subject of decision is—not a quantity *already* determinate, such as a house, or a horse, or a sum certain due on a note of hand—but a quantity which *remains* to be determined, such as a sum of money in compensation for a wound—wound to body, reputation, or domestic peace (vulgo, crim. con.)—then so it is that that which in the way of decision is to be done is—upon a *scale* of greater or less length to make choice of some one *degree* to the exclusion of the rest. The operation of fixing upon this degree is what goes commonly by the name of *liquidation*. This exposition you will not find in Coke upon Littleton; but upon examination, should you deem it worth the trouble, you will not the less find it to be correct: and so it is that this mode of decision, commonly called *liquidation*, is of the number of those the formation of which has from time immemorial been in the hands of a Jury. Now then as to this same operation, true it is they are used to it. But are they exclusively fit for it? *Semble que non*:

no; nor so much as *equally* fit for it. Used to it they are indeed; but how? even as eels are used to be skinned. No eel is used to be skinned successively by several persons; but one and the same person is used successively to skin several eels.

So much for *damages*: now as to *costs*. When for its reasonableness the quantum of the allowance made in the name of *costs* depends upon the propriety of the degree chosen, as above,—as for example in the case of the sort of allowance made to a witness for *diet* in part of travelling expenses,—they may be in this respect, and in so far, upon a footing with *damages*: but in so far as they consist of fees of judicial officers, in this case they are so in but a small degree: generally speaking, these same fees are so many determinate quantities: and so in the case of costs as between Attorney and Client: so are the fees actually paid to *Counsel*—degrees and liquidation are altogether out of the question here. But all this while, all this talk about *costs* (not to speak of *damages*)—what is it to the purpose? Be the functionary in question a Jurymen or a Judge, make what you will of *discretion*, what difference can it make—what difference whether the decision to be formed be called a *verdict* or a *decree*? liquidation, as above described, or any other operation. Talking is one thing; thinking is another; talking (at any rate in any determinate manner) is less needful at the Bar, more needful on the Bench. On the Bench, talking without thinking makes bystanders shake their heads.

Another thing. Of this same reasoning of his Lordship's, application being made by him—not only to cases “where something like discretion is necessary,” in saying “what costs are to be paid,” but also to cases where something not less like *discretion* is to be exercised in awarding “damages:” in such sort, that, in those cases likewise, three Judges are, according to him, in no less degree better than one—this being the case, may it not be that *these* cases likewise are among those which are resolved by him to be brought within the field of his jurisdiction, as above, in the same manner as these others?

If so, then so it is, that, notwithstanding that for these same cases Juries are so much better than Judges, their jurisdiction is actually resolved by him to be taken from those same favorites of his. If so, then alas! how feeble and slippery a thing is fondness in high places!—“Put not thy trust” (says somebody in holy writ)—“put not thy trust in princes.” In princes then shall we put our trust? No; nor yet in *Chancellors*.

3. Case 3d. "Last of all, where there are great and difficult and important points of law and equity to be *settled*, it is much more satisfactory to *suitors*, and to the profession which cultivates the sciences, to have that law considered and *settled* by more Judges than one."

Settled indeed! settled—by *Judges*, and those Equity Judges, three in number, the Lord Chancellor himself included! as if any "great and important points of law and equity" or any points at all of law or equity, ever had been settled by Judges—by Judges in the number of three or in any other number: as if it were in the nature of the case that any points at all, of law or equity, ever should be *settled* by Judges—by Judges in any number, acting as such: as if any point of law could ever be settled by any other instrument of settlement than that which is composed of a determinate assemblage of words, acknowledged to be the words of a determinate person or set of persons, invested with the branch of power styled the *legislative*.

Settled indeed? Yes: if instead of *settling* the one thing needful were unsettling, this is what is in the power not only of the three Judges in question acting collectively, but of a single one of them, that is to say the Lord Chancellor, acting severally. This is what he can do—this is what he understands perfectly how to do—this is what, over and over again, he has done: this is what he has been suffered thus to do, and without any the least notice taken of it: such has been the stupidity or supineness, or such the treachery and cunning of those individuals by whom, in conjunction with their fellow-legislators, this contempt of the highest authority in the state has been left unpunished. As to proof, looking out for proof of the perpetration of this crime would be looking out for proof of the existence of the sun at noonday: in the mind of any law practitioner or law student of a year's standing, the single word *registration* will suffice to call up a swarm of examples of this same securiticide practice: in the miscellany intitled "*Official Aptitude*," &c., in that one of its papers which is intitled "*Indications respecting Lord Eldon*," may be seen an example, not merely of the practice, but of the avowal—the open avowal—of it.

So much for *settlement*. Now for *satisfaction* and its conjugates, *satisfactory* and *satisfactoriness*. In this same *satisfaction*, we have the *end in view* which the noble and learned Judge has thus declaredly set before him, on the occasion of the "*resolution*" declared to be on this occasion come to by him—the resolution to bring about this great change. Satisfactory? to whom satisfactory? Some person or persons in

whose breasts the agreeable sensation designated by the term *satisfaction* will have place in consequence must be found, or no such quality as that which is designated by the attributive *satisfactory*, can have been produced by this same change.

Out of the above-mentioned three “branches of judicature” brought to view by his Lordship, as furnishing that same number of *cases* in which “the presence of three Judges is” so much “better than that of one”—in two, namely, the first and third, this same word *satisfactory* is inserted in the sentence, and employed in giving expression to this so highly desirable effect. But in the first of the two cases—namely, where “conflicting facts are to be discussed, or conflicting evidences to be heard,”—in this case, of the persons in whose breasts the sensation is to be produced, no intimation whatsoever is conveyed.

Remains, as the sole case in which any such information is afforded to us, case the third—namely, as above, the case “where great and difficult and important points of law and equity are to be settled.” In this case, then, who are the persons in whose breasts this same agreeable sensation is to be produced?—*Answer*—Persons of two classes or descriptions; namely, 1, “the suitors”—2, “the profession which cultivates the sciences—meaning (for what other things can it have meant?) the science of law, and the science of equity.

Now, then, as to these same two classes, that to one of them the change, if affected, *may* be made satisfactory, is what I can conceive; though as to its being *actually* made so, this is more than I could venture to promise myself: this class is that designated by the name of the “profession which cultivates the sciences.” But as to the other class—the class composed of the *suitors*, whatever I may have *supposed* on first taking the matter in hand, nothing upon a *closer* inspection, can I descry in the change—nothing that has any tendency to produce any such agreeable effect. Yes, if neither of their two Honours were to be on any occasion thenceforward present in any Court other than that in which his said Lordship sits; on which their own Courts would take the flight to the moon: whereupon, as above intimated, there remaining no more Courts than one, to these some suitors the corresponding quantity of delay, expense, and vexation, would be saved.

But to say that to both these classes,—namely, suitors, and the profession which cultivates those same sciences,—one and the same arrangement will be satisfactory, to say *this*, is as much as to say, that to the sheep and the wolf one and the same arrangement of the field or the sheep-fold will be satisfactory: to the sheep (need it be said), the arrange-

ment which, on this, as on every other occasion, will be the most satisfactory one, is that, whatever it is, by which the several quantities of delay, expense, and vexation, are minimized: to the profession which, according to his Lordship, "cultivates the sciences," the arrangement which, on this, as on every other occasion, will be most *satisfactory*, is that by which the quantity of delay, expense, and vexation, will be maximized: not that, considered by itself and for its own sake, delay will be thus satisfactory: no; scarcely would it be in any degree satisfactory, were it not for the use it is of in making addition to the expense, and the addition made to lawyers' profit by addition made to that same expense.

That to his Lordship, the arrangement thus by his Lordship resolved to be made, would, if made accordingly, be satisfactory—this is what may, without difficulty, be conceded: but this, howsoever it may have been the end in view aimed at, is not any part of the end in view professed to be contemplated, and endeavoured to be accomplished; in-somuch, that when the offspring of the mountain, which in her confinement has had so hard a time of it, has been looked for, not so much as a mouse, it is believed, will be found.

Moreover, as to the fields, which, speaking in general terms, his Lordship speaks of as having for cultivators the persons he mentions, these are "*sciences*:" but of the only two fields in particular, which, as above, are mentioned by him as being cultivated, (namely, *Law*, meaning Common Law, and Equity,) neither the one nor the other is, in its entirety at least, the subject-matter of a science. The subject-matter of a science is a thing capable of being known: but a thing which has no existence, is *not* a thing capable of being known: of that which is called *Equity*, no part has any existence; of that which is called *Law*, that part which in contradistinction to Statute Law is called *Common Law*, has not any more existence. An Act of Parliament is really a law: to know what there is in this or that Act of Parliament—to know, for example, what, under and by virtue of an Act of Parliament, a man is to pay in the way of a *tax*,—is indeed to be in possession of so much *knowledge*, and that *useful* knowledge: but it is not to be in possession of what is meant by *science*; any more than to know what o'clock it is. To know how to get money, by pretending to know what, on each several occasion, *law* says, or *equity* says,—this may, perhaps, indeed, be said to be a *science*: at any rate, the actually getting money in that way may be said to be exercising the correspondent *art*. But, sure enough, neither the doing this, nor the knowing how to do it, is what his Lordship meant when he spoke of "cultivating the sciences."

The knowledge of what *law ought to be*—that is to say, of that rule of action, conformity to which will, on each occasion, be in the greatest degree possible contributory to the happiness of all persons interested,—this is *indeed* a science. But, this science—how many are the men of law that ever thought of cultivating it? What has ever been to be got by it? What motive, of any sort, has any man of law, as such, ever had for cultivating it? What Bench is there that it has ever led to? His Lordship—did he himself ever stoop to cultivate it? did he ever deign to bestow a thought upon it? Is it anything better than *theory*? And with what disdain do not Noble and Learned Lords look down upon *theory* from the heights of practice!

So much for rules and corresponding principles: Lord High Chancellor's rule, three Judges on a bench better than one; corresponding principle, the *triple*-seatedness-preferring principle: unofficial theorists' rule, one Judge on a bench is better than three or any greater number; corresponding principle, the *single*-seatedness-preferring principle.

So much for rules and principles. Now for the application made of these same rules and principles—the application made of them by his Lordship to the particular case in question. What now shall I say of it? To speak of it, I must either profess to understand it, or profess not to understand it. Of these two opposite professions, the first is what I feel myself utterly unable to make consistently with truth: irresistibly, therefore, the other forces itself upon me. Of this dictum of his Lordship's, the meaning not being tangible, left to me are the words: these I must take in hand, and send my thoughts abroad in quest of some meaning for them.

At a former time, to which I see allusion is made by him, what he proposed stands thus expressed—"I proposed, therefore," says he, "that all causes of difficulty or importance in point of value, or from the law as applying to them, should at once be transferred here and be heard by me, as thereby the inevitable appeal" (meaning, I suppose, the otherwise inevitable appeal) "would be averted. The event" (continues his Lordship) "has justified my prospective conjecture, and leads me now to form the plan which I shall certainly adopt—namely, the transferring the bulk of that business" (meaning Equity business in general) "to this Court" (meaning the Lord High Chancellor's Court, in contradistinction to those of the Vice-Chancellor and the Master of the Rolls). Thus far his Lordship.

Now, then, as to *importance*, not to speak of *difficulty*, on the occasion of the *application* made of *the law*: where is the cause that is not of importance? If that which is of im-

portance to the suitors, or to one of them, is of importance, then (as the madrigal has it) "ten thousand pound to one penny"—no one such could be found. A cause which swallows up the whole of the property a suitor can command—is *that* cause of the number of those that are of "*importance*?" In point of value, sufficient to swallow up the whole of the property of nine-tenths of the good people of England, not to say ninety-nine hundreths, would be found to be, in the case of the least importance that ever came before the Court, the costs expended upon it before it had received its termination: the *costs*, I say, over and above the value of the subject-matter of the dispute.

Now, then, if so it be, that on the subject of importance as applied to a law or equity suit, there be in his Lordship's mind, enlightened as it is, anything of a misconception, where shall we look for the cause of it? Shall it not be in the loftiness of the situation occupied by it? In the eye of the learned profession and the opulent aristocracy, there are two classes of men whose happiness is of importance; namely, the said professional class and the said aristocratical class; forming, together, say between one-tenth and one hundreth of the whole community: there is one class, the happiness of which is of no importance; namely, the remaining nine or ninety-nine. On this theory, on a careful examination, has been found to be built the whole structure of the judicial establishment in England, and the whole of the system of procedure, according to which that establishment conducts its operations—an establishment and a system having for their object or end in view, in as large a proportion as may be, the dividing between the learned profession and its best customers,—namely, the dishonest among the relatively opulent, the property of the relatively unopulent suitors: for such is the effect—the manifested, the uncontroverted, the uncontrovertible effect—of factitious costs, and the system of procedure organized for the purpose of giving admission to them in the largest quantity possible: demonstrated may all this be seen in the *Petition for Justice*.

Well: but, for argument sake, let it be admitted that some causes there are which are *not* of importance. Thereupon comes the question—*how*—by what *criterion*—can those, who are empowered, and at the same time disposed, if any such there be, to distinguish,—and distinguish in time to prevent suffering,—those causes which are *not* of importance from those which *are*: and, in addition to this, comes, moreover, that other question, as to *difficulty*—the question—between those which are *not* of difficulty, and those which *are*. In the case of each individual cause, is there to be a

sort of preliminary *trial*, or equivalent to a trial, for the purpose of ascertaining whether or not it be of *importance*? And so, moreover, in regard to *difficulty*? If so, by what course are these several *preliminary* suits or causes to be respectively conducted?—by *Bill in Equity*?—by *Petition*, as in a Bankruptcy case?—by a *Grand Jury*, as in Common Law penal cases?—or by action, real or feigned, as in a civil cause?—or would not trial by *cross and pile* be preferable to them all? for, at any rate, it would save, or, at any rate, if his Lordship pleased, might be made to save, *costs*.

One thing we are informed of, and that is,—that of the aggregate number of causes, the great *bulk* will enjoy the benefit of this same exaltation; but still the number of them—the absolute and the relative number—remain to be grasped at by conjecture.

Now, then, comes the transference—the so determined *transference*. What, on this occasion, can his Lordship have meant by *transference*? to what causes was it meant to apply? to causes already in existence, or to future contingent causes, and those only? or to both classes? In each of these two respectively, by what *hands* is the transference to be made? in what hands is it to originate? Will his Lordship, *ex mero motu*, go to the Court below, take in hand the *record*, lay it on his shoulder, and thus carry it bodily into the Court in which he so illustriously reigns? saying or not saying—this cause is of sufficient importance to be, in the first instance, and thereby to a certainty, heard and determined by me?—of too great importance to be entrusted at all to such a man as you, Sir Launcelot Shadwell, or to such a man as you, Sir John Leach, otherwise than in *leading strings*, with myself to hold them? Or will he wait for some one else, and who, to *move* his Lordship for leave to bring up the cause into his Lordship's high Court? In this latter case, the motion—will it be a motion of course, or must it be a motion for a rule to show cause why this new sort of *certiorari* should not issue, with liberty, on the other side, for cause to be shown accordingly?

Difficulties upon difficulties thus stand in the way of this arrangement, the design of which is to remove difficulties—difficulties, and those such as I cannot but think will be found to be insuperable ones.

So much for the *causes*, and the *transference* so resolved to be performed of those same *causes*. But now for the *Judges*—the two other *Judges*, whose destiny it is to hear, or be present at the hearing of, and to help determine, or be present at the determination of, those same causes. By what means, in what manner, are they to be transferred from their re-

spective inferior benches to his Lordship's superior bench? This same transference—will it be *agreeable* to them respectively? Will it be (to use his Lordship's word) *satisfactory* to them? May it not happen to them to be more or less recalcitrant? On the one bench sits the *Master of the Rolls*: but another seat there is, on which, if not now, it may happen to him to sit at any time; and that is a seat in Honourable House. In that House sat lately the most illustrious of his predecessors, *Sir William Grant*; and in support of aristocratical swindling, and against the cause of moral honesty and payment of just debts (*Romilly è contrà*), Knight's service did he do there.

Should, then, either of these demur, will he send his messenger to them, as did in Charles the First's time the Honourable House, to take them bodily off their own benches, and set them down on his Lordship's? Or will he himself take them up in his noble arms and on each shoulder, St Christopher-like, carry them off, and so deposit them?

To save this trouble, will Lord Tenterden lend him a *mandamus*? Scarcely without an Act of Parliament to warrant it, the attainment of which, in case of need, seems, indeed, to be among the number of his Lord Chancellorship's resolves. But then will come committees, and first, second, and third readings to both Houses, and objections upon objections.

So much freer from difficulties would be the Jury plan—the plan so decidedly pronounced by his Lordship to be the better of the two. “*Good men*,” in the shape of jurymen, are as tame and obedient as spaniels. Shew them a box, and call it a jury-box, they run into it at first word. Vice-Chancellors and Masters of the Rolls—the more I think of them, the clearer I am that they would run rusty. I hear them remonstrating and preaching—I see them kicking and sprawling, with clouds of powder flying out of their wigs, before they can be brought, if ever they can be brought, to sit still under his Lordship's eye, and nodding approbation in obsequious silence.

Before I leave this topic, let me give utterance to another humble wish I have formed, which is the wish to know, whether (jurymen apart) the preference given to the greater over the lesser number stops at the number *three*, or whether, if he could get any, and what *greater* number for his puisnes, he would do so, his stopping at number *two* having no other cause than that he knows not very well how to get any more of them. To my humble apprehension, if in any degree the “*variety of constitution*” in which he puts his trust were to be found in number three, it would, in all probability, be

found in a still higher degree in number four; and so on in the numeration table. If it be in superior magnitude in number in conjunction with "*variety of constitution*" that he puts his trust, I could point to situations more than one in which he might find judicial characters for puisnes with less danger of difficulty than in the two only ones he as yet speaks of: for example, Masters in Chancery, Magistrates paid, Magistrates unpaid, men qualified to be special jurymen, men qualified to be grandjurymen; and, to add dignity *ab extrâ* to intrinsic aptitude, even a Lord or two might, with less reluctance than the Master of the Rolls (not to speak of the Vice-Chancellor), be prevailed upon to lodge their sitting-parts on the high bench.

For my own part, my own opinion, right or wrong, is at any rate clear, determinate, and self-consistent: it is—that so far as depends on *number*, in the case of a judicial situation, aptitude is as the number of the functionaries occupying it, inversely; were it only because responsibility is so: or in other words inaptitude is as the number directly, and for that same reason. Now then what on this occasion I could wish to know is, whether in his Lordship's opinion this same proportionality has place—the only difference between us being that between the *inverse ratio* (I speak here to the noble and learned mathematician) and the *direct*; or whether the numbers to which on this occasion he gives his preference, follow one another in perturbate order (as Euclid has it), like cards in a pack well shuffled, or in the regular rank and file order of the Numeration Table.

If Masters in Chancery would be "satisfactory" to him, I dare answer for him and them, he might, without any dissatisfaction on their part, have them to sit with him; and in whatever number would be most "satisfactory" to him: especially if they were to have, each of them, all the while, a newspaper to read, or pen, ink, and paper, to write letters with, (as some learned Judges of superior order have been seen to do, while learned Counsel were straining their throats): the master's clerks doing, all the while, at their respective chambers, the business which their said masters were paid—by a fee for each business—for pretending to do. An additional source of *satisfaction* in this case is that those same Assessors would, every one of them, *know his place*. This place is, on each side, that which is as far from that of his Lordship—the Lord High Chancellor—as possible: his person being encompassed with an atmosphere the repulsive quality of which is strong enough to produce that decorous effect. Such, at least, speaking from the testimony of my senses, used to be the state of these things in former days:

nor could I without a sentiment of commiseration behold one of these learned gentlemen in the state of humiliation to which he seemed doomed : his Lordship not taking any more notice of him than if he were a post. A Master of the Rolls or a Vice-Chancellor—would he submit to this ? I question it.

This change then, supposing it effected,—what would be the effect of it ? Just so much pure evil—evil, without a particle of the matter, or in the shape, of good : the business of the two subordinate Courts interrupted and deteriorated : and the business of the highest sphere—of the sphere illumined by the brightest luminary of the law—the business of the superordinate Court, not benefited nor advanced, but retarded also : the suitors of the subordinate Courts—such of them at least as are *in bonâ fide*, not wilfully employing the power of those same Courts as an instrument of depredation or oppression—these ill-starred men, vexed by delay : the practitioners in those same subordinate Courts vexed likewise, and by that same cause : and to conclude the train of mourners, the two unhappy subordinates—mutes, and, for the loss of their own business, mourners—their two honours, vexed likewise : vexed, by being humiliated, dislocated, disempowered, dishonoured, and metamorphosed into mutes : singing, when out of Court, diswigged and disgowned—singing in doleful ditty a d duet,

“ *Nos inhonorati et donis patrue libus orbi.*”

As for me, when I entered upon this discussion, as the reader may have observed, a ray of hope beamed upon my mind. Imagination presented to my view stages of appeal, one or even two, eliminated : so much delay, expense, and vexation saved : the matter of a mixed mass, composed of *salaries* and *fees*, kept in the pocket out of which in the present state of things it is snatched. This hope, alas ! has now, for some time past, been dissipated. “ My wish was father,” my imagination mother, “ to that thought.” Still would sit their two *Honours*, pressing, not less heavily than at present, with their dead-weight upon Justice. Delay, far from being diminished, would, as above observed, be increased : for while with their sitting parts on the High Bench they were constituting part and parcel of the living stock of functionaries of that Court, the business of their own Court would be at a stand.

Of this disastrous truth, a sad confirmation is afforded (how could I overlook it ?) in and by one of the very sentences, in which his Lordship makes mention of this transference. “ I have power” (says he) “ to ask for the assist-

ance of any, or all of the Judges of Westminster Hall; and I know not why I should not have the power of asking to be assisted by the presence of the Master of the Rolls and the Vice-Chancellor, *when necessity requires;*" having in view of course, the familiar phrase "ask and have." Now then, what is clear is—that no such "resolution" can ever have taken possession of his Lordship's mind, as that of absorbing into and swallowing up in, his own noble and learned maw, the whole power of all those same learned Judges put together: as well might he swallow up those same learned persons themselves—flesh and blood, bones, wig and gown, and all; nor at the same time is any distinction expressed, between what he proposes to do by the two Equity Judges—the Master of the Rolls and the Vice-Chancellor—on the one part, and what he proposes to do by those same Common Law Judges, on the other part. And, as to the resolutely devoted pair of Judges, what is it that it is his resolve to do? to keep them tethered down to his girdle, in his own custody, during the whole of their official lives? Oh no: only "*when necessity requires:*" and this *her requisition*—when is it that Dame *Necessity* will make it? *That* will depend altogether upon his own noble and learned discretion. To his Lordship on each individual—yes, *individual*—occasion it will belong to determine in what place or places they shall be; and, for aught that anybody else will be able to tell, they may, at all times, be in a state of vibration, like a pair of pendulums, between the Court of Chancery and their own proper Courts.

As to myself and my own labours,—I have spoken as above, of the retribution they have received by the tokens of approbation here and there expressed in relation to them. In and by the following passage with which this same speech of my noble and learned friend concludes, I cannot but behold a rich reward—honourable to me on whom it is bestowed—not much less so to him to whose magnanimity, under such provocations as it has happened to him to receive from me, I am indebted for it:—"It was a remark," says he, "of a learned and venerable friend of mine, one of the greatest sages of the law—I mean Mr Jeremy Bentham—that one of the greatest evils arising from vacations, was the shutting up the Courts at the very time when suitors might have the greatest occasion to require access to them. I do not think I can subscribe to the whole extent of his doctrine on this point; but, undoubtedly, that there is a great benefit to be conferred by keeping always open some part of the Court for pressing business, I most entirely agree with him in holding."

On the social part of my mental frame, this token of kindness has made the sort and degree of impression which it could not fail to make: but neither by this nor any other impulse, am I to be turned aside from my duty to that public to the service of which the labours of my life have so long been devoted. That I am not to be corrupted by gold is already pretty well known: it will now be known that I am not capable of being corrupted even by gratitude.

Would that by anything I could say or write, I could turn aside my Noble and Learned Friend from bit-by-bit, (the word is his)—from bit-by-bit, and ill-considered, unconcocted, incoherent, and unseasoned, supposed reforms or improvements in legislation. My portfolio, my arms, my heart, are still and always will be open to him. Had he but on this occasion had the command over himself to resort for information to that source from whence, at his desire, information on kindred subjects had been so amply communicated to him, and in some sort profited by, (alas! that it had but been a little more profited by!) the disappointment to which so insufficiently considered a proposed and declaredly-resolved-on arrangement seems inevitably doomed, with the mortification inseparable from the failure, would not (I cannot but think) have been experienced.

To the functions of judicature, then, let him confine his exertions and his “hope of glory;” as to legislation, so far as regards origination of measures, leaving the field to him, whose proficiency in that branch of art and science was recognized some years before the existing successor of Lord Bacon saw the light.

Never, without violence done to my feelings, is condemnation, how loudly soever the occasion may appear to me to call for it, passed by me upon any part of the character or conduct of a friend: never, without satisfaction to those same feelings, is commendation, when it presents itself as deserved, paid by me, even to an enemy.

A subject which I contemplate with sincere and unalloyed delight, and with which it rejoices me to be able to conclude this unavoidably polemic discussion, is the dispatch—the altogether unexampled dispatch—spoken of by his Lordship in this same speech, as given by him to the business of that Court, on which it casts so bright a lustre. In what light does it not place the *job*—the justice-obstructing Court—set up by the most indefatigable, implacable, and irresistible, enemy to justice and human happiness, that his situation was ever filled by:—that *job*, which Romilly, one of the earliest and most attached of my disciples, so strenuously and so fruitlessly fought against.

By the "indiscriminate defenders of right and wrong," this dispatch, with the relief afforded by it to suitors, is murmured at and attacked. Against these attacks one part of the defence I had rather not have seen. When convinced, from the statement of the party's own advocate,—convinced of his being in the wrong, this Judge's way (he tells us) was—to keep the other causes waiting, while the Advocate, on the other side, was taking up the time of the Court, in labouring to prove his being so. Favourable and gratifying to Advocates is, of course, such patience, such licence, such indulgence. Yes, indeed, to Advocates—but what is it to suitors? This comes of having Judges, whose apprenticeship, instead of being served under masters whose interest is identical with, is served in fellowship with those whose interest is irreconcilably opposite to, that of the whole people besides, in their capacity of suitors, and those who, but for the prohibitive factitious expense, would be suitors. But this is human nature. Who is the lawyer's neighbour? His brother lawyer: this is the man whom he loves next to himself. This is lawyers' law and lawyers' gospel. Being competitors, they, indeed, like harlots of the other sex, hate one another: but, not the less do they, like wolves, herd together, and join in hunting and devouring their common prey.

Not quite so much regard as is wished by the Bar is paid by him (I hear it said) to anterior decisions. May be so: but, be it ever so little, quite as much is it as is wished by me. Are you an Equity Judge? pay no regard at all (say I) to anterior decision: set before you, on each occasion, this one end in view—this one principle—the *disappointment-minimizing* principle. Pay any regard to them? why should you? no otherwise contributory to human happiness was any one of those decisions, than in so far as it operated in conformity to that all-beneficent and all-comprehensive principle. If so, then why not, under its guidance, take the direct road, instead of passing through those tortuous tracks which, intentionally or unintentionally, have so continually turned themselves aside from it? When, with *equity* on his lips, a Chancellor first entered upon this devious course, what regard paid he to the anterior decisions of the, till then, only class of Judges—the *Common Law* Judges? For justifying such his deviation, what plea could he have made, if it was not this—"Pursuing on this occasion *their* rules, the Judges would produce disappointment: taking the course I take, I prevent it." Such, in spirit and in purport, must, if questioned, have been the defence of the first equity-administering Judge. Such, at any rate, is the doctrine which, in my proposed experimental measure of law reform—

my Equity Dispatch Court Bill—I venture to preach—the course which I propose that my Dispatch Court Judge shall be empowered and called upon to take : he to whom it appears that he “knows cause or just impediment why” the same should not be taken, let him “declare it.”—“This the first” and “last time of asking.”

Not only on the subject in this speech mentioned by him—namely, the undiscontinuity of the administration of justice,—but moreover, on that which, on the present occasion, is the principal subject,—namely, the most appropriate number for the seats on an official bench,—before the public eye, and thus courting that of my Noble and Learned Friend, has, for this twelvemonth or more been *my opinion* : witness my *Constitutional Code*,* on which occasion, with scarce an exception, *single-seatedness*, as opposed to *many-seatedness*, is advocated as the only defensible arrangement. True it is that the only offices there under consideration are those of the Administration Department : and those here in question belong to the Judicial Department. But in that section, with its sixteen pages, not an argument is there, which applies with less force to the Judicial than it does to the Administrative Department. In another part of that same work,† to the arguments which, as above, apply in common to both departments, are added others, which, in an exclusive or peculiar manner, apply to the Judiciary. To these, they not being yet in print, I may, perhaps, before I have done, give insertion here.

* Ch. ix. MINISTERS COLLECTIVELY ; § 3. *Number in an Office* : Vol. 1, p. 216.

† Ch. xii. JUDICIARY COLLECTIVELY ; § 9. *Number in a Judiciary*.

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OBSERVATIONS

ON THE

BANKRUPTCY COURT BILL.

(Continued.)

Now as to *Fees*. As to fees, the Lords' Bill said nothing: the Commons' Bill, in the first edition of it, as little: in the second edition, comes the list of fees. Why not till the *second* edition? *Answer*—because, at the time of its being delivered in, the determination having been taken to hurry the Bill through both Houses, with a precipitation in such a case altogether without example, it was seen that all examination of it would thus be rendered the more assuredly impossible.

Obscurity here, as exquisite as ever: Of these lawyers' sweetmeats—to suitors, pills so bitter—the list is divided into two schedules. *Items*, in schedule I, 10; in schedule II, 12. *Sources* from whence the precious matter is drawn—that is to say, *operations* and *written instruments*,—in eight of the twelve items of the second schedule, upon the face of them, the same as in the first. In three of those eight instances, for one and the same *operation*, the fee in the second schedule is, as above, different from what it is in the first. Of course, (*reason* never having as yet been able to find its way into an Act of Parliament)—for no one of all these differences is any *reason* assigned: and as to the *cause*, for this also we are left to conjecture. As to the question in which of the *five* Courts instituted by the Bill instead of *two*, the fees are to be paid, in schedule I. nothing is said: in schedule II, namely in item 3, mention is made of the Court: it is “the Court of *Review* :” so likewise in item 6: in that instance, it is “a *Subdivision* Court.” Schedule I. bears for its title these words—“*The first schedule of fees before referred to* :”—referred to? where? this is not said: the title of schedule II. is—“*The second schedule of fees before referred to* :”—where referred to is not said. Of *this* obscurity, the cause (it is true) lies in parliamentary practice—in the shapeless shape given to Bills—the shape in which *sin* appeared to Milton: division none; object of reference, accordingly, none: to the noble or honorable and learned draughtsman, or draughtsmen, all that can be justly imputed is—the advantage taken of the obscurity, and the confusion produced by it.

26 OBSERVATIONS ON BANKRUPTCY COURT BILL.

In this stygian darkness, one thing alone is clear: and *that* is the determination to maximize the weight of the burthen heaped upon the afflicted.

Now for proof. Of fees, in the instance of which it is the *interest* of those to whom the *power* is by this Bill given, to give increase to the *number* of the *occasions* on which they are received, or to the *quantity* of the *matter* in proportion to which the amount of the fee receives increase, behold the seven examples following:—

	£.	s.	d.
1. In schedule I, item 4—For every <i>order</i> on hearing	1	5	0
2. In schedule II, item 4—For every <i>order</i> pronounced by that Court (namely the Court of Review, as per the last preceding item)	1	5	0

A word here, as to the instrument here denominated *order*.—In these two cases, is it the same thing, or a different thing? No bad subject-matter for litiscontestation this:—that is to say, should the fee-gatherer of any one of the five Courts other than the *Court of Review*, claim a fee to this amount, for an *order* thereof, which is *not* an order *for hearing*.

	£.	s.	d.
3. In schedule I, item 5.—For every previous minute of order	0	3	6
In schedule II, item 5	0	2	6

Note—that, for every order there will of course be a previous minute thereof.

	£.	s.	d.
4. In schedule II, item 6—“For entering every matter for hearing in a Sub-division Court”	0	1	0
5. In schedule II, item 7—For every order pronounced there	0	5	0

Note now the fees, of which, (they being payable on the occasion of a *written instrument* exhibited), the amount will increase with the *number* of the *words* in *each* such instrument, as well as with the number of the *instruments*, which can be contrived to be elicited: contrived, as above, by *rules and orders* of the Lord Chancellor and his confederates, the three *puisnes*, or by the *practice* of the Judge or *Judges* of the several Courts, in or by which these instruments are respectively exhibited.

	£.	s.	d.
6. In schedule II, item 9—in schedule 4, item 10:—in both schedules, the description of the source of the fees is the same—namely, for copies of affidavits, <i>orders</i> , and other proceedings, per folio of ninety words	0	0	1½

In these three halfpence behold the premium, which so many learned persons, of whom one is noble, and divers and sundry others honorable, are giving themselves, for every ninety words they can contrive to get put into these several written instruments. Taken by itself, this sum, three halfpence, is no great matter: but, many *littles* (says the proverb) make a mickle: and four of these *littles* constitute more than many a debtor or creditor has for a days' sustenance: and, when taken from him, will deprive him of it.

	£.	s.	d.
7. In schedule II, item 8—For fees on the trial of every issue, to be paid by the successful party	2	0	0

Here presents itself a puzzle:—This anxiety to place the load on the shoulders of the successful party, whence comes it? this party, according to every natural presumption, will be the party *in the right*: and, in the mind of every man, this presumption will be the stronger, the higher his opinion is of the aptitude of the Judicatory by which this same thing called *an issue* is to be tried; the Judicatory—that is to say, in this case, a *Jury*: and, in the opinion of the noble and learned author of this Bill, how much lower than the seventh Heaven is the place occupied by a *Jury*, of what sort of men soever composed, so there be twelve of them, and the twelve put all of them into a box? This penalty, why thus imposed upon a man for having been, by a Jury, pronounced to be in the right?

Then as to *pockets*:—the pocket, or pockets, into which this same *2l.* is to find its way? to find its way—in the first place *immediately*,—in the next place, ultimately: where are these same pockets—whose are they to be? Be this as it may, the *Court* is in this case the Court of *Review*, and the Judge, before whom the issue is to be tried, is “one of the Judges thereof:” so says § 4 of this second edition of the Commons’ Bill.

Now then, to what purpose other than the *fee-gathering* purpose, is organized the complication, produced by the mention thus made of the word *issue*? Can any bounds be assigned to the amount of the property, in relation to which, in the ordinary course of things—in every days’ practice, questions of *fact* have been decided upon by the existing Commissioners, and will have to be decided upon by the *new* Commissioners, and without this prædatory formality of sending the question to be tried by *an issue*? If in those instances the mode employed in determining this same question of fact is a proper and sufficient one,—how can it be otherwise than sufficient, in any of those instances in which these learned Judges are authorized to load the suitors with the burthen, and their own pockets with the benefit, of this tax? Then again—in the case in question, is the established *fiction* to be employed?—the fiction of a feigned action in a Court of Common Law, with the fees, the expense, and the delay attached to it? For the shutting the door against this money-snatching lie so regularly told by Judges and their accomplices, I see no promise in this Bill: nor, to my recollection, has the door been shut against it by any Act of Parliament. Were the practice a common one, the abomination constituted by the Chancery and so-called *Equity* proceedings, could not, even by the so-much-too-patient people have been thus long suffered.

But, of the twelve *good men and true*, with the burden imposed on *them* as well as on the suitors—where, in *this* case, (not to speak of other cases) is the *need*, not to speak of *use*? True it is, above all price is the institution of a jury: and *that* on two distinct and widely different accounts. One is—the *publicity* it has been the means of securing, to all proceedings in which it has place; the other is—the *veto*, with which, at the price of submitting to torture and committing perjury, it enables the people, to so great an extent, to paralyze tyrannical and liberticide laws and judicial practice. But, on which of these two properties will the noble and learned author of the bill lay his finger, as being, on the present occasion (not to speak of former occasions) the property by which the institution has been recommended to his favor? and *that* with such effect, as to have produced this his determination to force it into this branch of business, to which it has hitherto been almost, if not quite, a stranger?

Thus to force it in, and thereby to put this additional instrument of evil into the hands of every *mala-fide* suitor—every dishonest suitor, who, knowing himself to be in the wrong, trusts to the relative and comparative indigence of an opponent, for his success? Assuredly to neither of the positions, by which these two properties are pronounced *beneficial*, will he subscribe: which being the case, should he venture to attempt a justification of this arrangement he will find himself reduced to his old aphorism—namely, that, provided they be in number twelve, and all twelve put into a box in a chamber called a *Court of Justice* (not a box in the *Opera House*)—men, no one of whom had ever been in a Court of Judicature in his life, will understand the business of judicature better than a man who has passed half his life in the practice of it (*a*).

Here follows an extract from the self-published speech of Henry Brougham, Esq., spoken in Honourable House, February the 7th, 1828, on moving the *Local Judicatory Bill*.

Page 16.—“There are two observations, sir, which I have to make, relative to the Judges generally, and which I may as well state now I am upon that subject. I highly approve of paying those learned persons by salaries, and *not* by fees, as a general principle; but so long as it is the practice not to promote the Judges, which I deem essential to the independence of the bench, and so long as the door is thus closed to all ambition, so long must we find a tendency in them, as in all men arrived at their resting place, to become less strenuous in their exertions than they would be if some little *stimulus* (*b*) were applied to them. They have an

(*a*) For all these judicatories, where are to be the several and respective *Justice-Chambers*? On this occasion, let us hope that a *Court-building* job is not intended to be added to the *Church-building* job. I say *Justice-Chamber*—to keep clear of the *ambiguity* involved in the word *Court*, as well as in the word *Church*: an ambiguity, by which so many worthless and maleficent real entities are respectively erected into, and confounded with, one venerated fictitious entity.

As to the institution of a *Jury*, so far am I from being an enemy to it, that, to everything in it which is beneficial I give an extent, in a vast proportion beyond what it has at present: namely, by means of an improved *substitute*, to which I give the name of *Quasi-Jury*.

(*b*) *Stimulus* indeed? Profit, which is the same, neither more nor less, exertion or no exertion, and, if exertion, how strenuous or how little strenuous soever it may be,—in this state of things, what is the exertion which the stimulus is capable of affording? A profit, moreover, which, more or less of it, if not all of it, is received and pocketed—not by the man in question—the Judge—but by his locatee—the man appointed by him to a different office, though indeed an office of which he has the patronage? *Stimulus* indeed? Of those same subordinates of his, be they who they may—even of these men, how is it that to any exertions of theirs, by these same fees, any stimulus can possibly be applied: for, in their instance as well as in his—exertion or no exertion—exactly the same is the profit, neither more nor less.

This same exertion—how is it to come? what is there to call it forth? One man puts his name to a *paper*, and for so doing receives a *fee*: for the motion thus given to his hand, what are the exertions necessary—what the degrees of *stimulatedness* they are susceptible of?

Another man takes the *copy* of a paper, and for this same copy takes a fee. What are the exertions here?

Tell us, good Mr Brougham, I said *whilom*;—Tell us, good Lord Brougham, I say now.—What—mute? O yes: to all these questions mute you ever have been, mute you are, and mute you ever will be.

Certain occasions there are (suppose) on which the exertions might, by this sup-

irksome and an arduous duty to perform; and, if no motive be held out to them, the natural consequence must be, as long as men are men, that they will have a disposition, growing with their years, to do as little as possible.

"I, therefore, would hold out an inducement to them to labour vigorously, by allowing them a certain moderate amount of fees. I say a very moderate amount, a very small addition to their fixed salary would operate as an *incentive*; and if this were thought expedient, it ought to be so ordered that such fees should not be in proportion to the *length of a suit*, or the *number of its stages*, but that the amount should be fixed and defined once for all, in each piece of business *finally* disposed of. (a)

"I am quite aware that this mode of payment is not likely to meet with general support, especially with the support of the reformers of the law; but I give the suggestion as the result of *long reflection* (b), which has produced a leaning in my mind towards some such plan. I throw out the matter for inquiry, as the fruit of *actual observation* (c), and not from any fancy that I have in my own head.

posed stimulus, be producible: to these occasions is the application of it confined? Not it indeed: it is altogether indiscriminate.

Stimulus indeed? Exertion made strenuous? O yes. Certain occasions there are on which—certain *purposes* there are for which—the property of a fee to act as a stimulus—to produce exertions, and those strenuous—and made to act, and with effect, with but too much effect,—shall not be disputed: purpose, the producing occasions for the demand and gathering in of fees; occasion, every occasion on which a cause, or a pretence, for such demand can be manufactured.

Yes:—to *this* stimulative power of fees—to the stimulative power of fees when *thus* applied,—to this it is that the whole technical system of procedure—every part of it—that productive system of which his Lordship has done so much towards augmenting the efficiency—to this it is that the people are indebted for that system of factitious expense and delay, by which *justice*, or what goes by the name of it, is *denied* to the vast majority of them, and at so exorbitant a price *sold* to all besides.

Stimulus indeed? O yes: as to the work of generation, so far as expense, delay, and vexation are the fruit of it, approdisiacs—cantharides—of altogether incontestable, irresistible virtue are these same *fees*.

(a) A "*piece of business*," what? Of this same piece of business, what "*disposition*" is it that will be universally understood to be a "*final*" one?

(b) [Long reflection.] Long reflection indeed? This was a^o 1829, when he was plain *Henry Brougham*—plain barrister-at-law—how famed soever in the same. Two years have elapsed—he is now Lord High Chancellor—he is now omnipotent—he is now invested with the power, the magnitude of which cannot be more appositely or impressively displayed or testified, than by the circumstance of its giving existence to a measure such as this. In this it is that we have the only shadow of a use, which his imagination—powerful and fruitful as it is—is able to frame for putting it to in idea. And now what does he? He has taken in hand the instrument—he has studied it—he has pronounced it a good one, and fit for use: yes—fit for this use: and after all, the only use which he can find hardihood enough to speak of with approbation—this use he does not put it to: all the uses, on which, on this occasion, he has passed condemnation—condemnation which, though but implied, is not the less manifest—and on other occasions (as will be seen) such vehement condemnation—all these uses he now not only approves, but, in numbers of instances altogether countless, will be seen putting them to.

Oh no! not fees alone, but salary eke also:—salary, so it be added, not substituted to them, he has no objection to.

(c) [Actual observation.] Actual observation? Quere of what? Of the

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"But I may also mention, that some friends of the highest rank and largest experience in the profession agree with me (a) in this point,—men who are among the soundest and most zealous supporters of reform in the Courts of Law."

22 Feb. 1831, *Mirror of Parliament*, p. 409—"The fourth principle (b),

moon? or of the satellites of Jupiter? or of any of those *conjunctions* by which days are pronounced lucky or unlucky, and fortunes told?

(a) [Agree with me.] Agree with him?—O yes: to this assurance credence may be given without much danger of error. Suppose an enactment made, aiming, in appearance, at this object,—no want assuredly enough would there be of fees: fees generated by *doubts* and consequent suits; fees of the genuine description, generated by doubts as to the source out of which this new-invented spurious fee, or rather so called *fee*, was to be understood to flow.

Of this same stimulant, what shall be the dose? Shall it be the same in every *sort* of bankruptcy case? Shall it be the same in every *individual* bankruptcy case? In Equity, an instance may be seen of a suit, in which the value of the property in question did not exceed some such matter as 10*l.*: others, in which it has not been less than some such matter as a million of pounds. I speak thus loosely, because, on an occasion such as this, trifling errors are not worth guarding against: nor, in bankruptcy matters, is the case much different. In all these cases is this fee (call it the *clenching* fee, or the *quietus* fee) to be the same or different? if different,—the magnitude of it bearing a certain proportion to the value of the subject-matter of the suit (this same value, quere how to be ascertained?), what shall be that proportion? Here then would be to be made a *scale* of fees: here would be to be made matter for a *schedule*. Thus then would learned gentlemen have matter for *doubts*—matter for "*great doubts*:" matter for swarms of suits, each of them pregnant with swarms of doubts: suits out of any one of which, with the assistance of a Lord Eldon, a *malá fide* suitor, having for his object the ruin of a man marked out by him for his victim—destruction of his property, with or without the acquisition of it—might be able to drag it on to five, ten, or fifteen years' length, at the expense, more or less, of as many thousand pounds.—No: the question as to the disposition of those same men, who, being "in the profession," are among those "of the highest rank and largest experience" in the same,—the question as to their agreement on this subject, with his then barrister-ship, now lordship, is a question out of which no such, nor any other *doubts*, can be generated: nor, in regard to these same learned gentlemen, need it be stated as matter of great doubt, whether they are among the "most zealous supporters of reform in the Courts of Law."

(b) [The fourth principle] (1.) "Judges should be *remunerated* for their labours. . . . (2.) Judges ought to be *well* remunerated. . . . (3.) Judges' labour . . . ought to be *amply* but not *extravagantly* paid for."

"1. The patient should be *physicked* for his disease. . . . 2. The patient ought to be *well* physicked. . . . 3. The disease ought to be *amply* but not *extravagantly* physicked for." What should we say of a medical practitioner whose prescription should run thus?

A genus of discourse there is which goes by the name of *twaddle*: may not this be stated as being a species of it?

Yes: if you are a man of craft, exquisite is the subserviency of this apparently silly matter to your purposes—to any of them that will not bear the light. Talking all along in vague generalities, composed of words of indeterminate signification—no line drawn anywhere between the quantity that is and the quantity that is not eligible:—talking thus, let but your language run smoothly, everybody, as he thinks, understands you—understands you in his own sense—in the sense most pleasing to himself—in the sense which accordingly renders him most pleased with you: talk thus—and, so far as depends on *him*, your point is gained.

Yes—everybody: not merely those who, having a sinister interest to serve, are determined to be satisfied with whatever it is that you say—not only these, but even

"and the last with which I shall trouble your Lordships at present, is to provide, where it is possible, (and I know not why it should not always be possible), that Judges *should be remunerated* for their labours. It relates to the remuneration of the Judges and their subordinate officers,

the few, who, if they knew how, and if it did not require too great a sacrifice, nor give them too much trouble, would rather do, and be thought to do right than wrong: and who are in the house, either to oblige a friend, or for a lounge, instead of Brooks's, Almacks, the Athenæum, the Opera, or a private party. Advice, descriptive of this policy, with recommendation to employ it—advice to this effect, would make a most appropriate match with *Hamilton's Parliamentary Logic*: and if not already there, should in the next edition be inserted in it.

So much as to persons at large. Now as to his Noble and Learned Lordship.

Well then—this same *twaddle*, when he was thus talking it, was it with him as with *Monsieur Jourdan*, who had been talking prose all his life without knowing it? O no: perfectly well what he was about knew he. *Exoteric* and *esoteric*—what was that school—was it not Pythagoras's—in which men were all along taught how, in and by the same set of words, to deliver two different and even opposite doctrines—one of them designated by the one, the other by the other, of these two words? *exoteric* for the deception and satisfaction of the people without doors (for that is the meaning of the word)—*profanum vulgus* (as Horace calls them); the *esoteric* for the use, purpose, and information of people within doors—the choice few—the Noble Lords, Honourable Gentlemen, and Select Vestrymen, of those days. Of the doctrine thus preached by their noble and learned professor the obvious sense was the *twaddlic*—the *exoteric*—sense; but besides this had it not an *esoteric* sense? O yes; that it had.

A man who, for a particular purpose, puts on a character different from, upon occasion even directly opposite to, his own, is no novelty in this wicked world of ours. For the purpose of slaying tyrant Tarquin, did not one of the Brutuses wrap himself up in the garb of insanity? For a similar purpose, did not Hamlet wrap himself up in the like garb?

In former days, Monarchs, for their amusement—were they not wont to have *wits*, under the garb and name of *fools*? Look then at our Noble and Learned twaddlist—look at him a little closely—look at him in his robes—and ask yourself whether on this occasion you do not see him covering them with the garb of a simpleton. And why in a character so opposite to his own? Oh! only for the purpose of putting a little bit of deceit upon us simple folks—upon us the people without doors! And why thus deceive us? Oh! no harm to us! all for our own good! The purpose (it may be seen) divides itself into two parts: Part 1, engaging Houses Right Honourable and Honourable to concur in the giving, in addition to salary, the dear delightful *fees*: here we have the *esoteric* doctrine—the doctrine for the reception of which they were and are, by habit as well as disposition, so well prepared: Part 2, engaging us whose place is *without doors* to bestow our acquiescence in this same so agreeable an arrangement.

O yes—when you see the noble and learned preacher, with the robes of Judge Bridgson over his own, delivering this same twaddle doctrine; call it, if you please, by that name: but, when you have done so, mark well the ingenuity with which, in the prosecution of this same purpose, it is employed—employed in raising clouds—clouds of dust, for the purpose of blinding such eyes as the purpose required to be blinded—those of the people, who are standing and staring *without doors*, and those of such of the Noble Lords, if any such there be, who are not in the secret, and who, were their eyes open, might be shy of giving their concurrence.

Behold him accordingly taking in hand the above-mentioned three *nothings* and holding them up to view in the guise of so many *somethings*: behold him taking them in hand, and making them into a *wedge*—a wedge for insinuating the job, and, when once in, driving it on into adoption.

So admirably well adapted to its purpose is this same *wedge*, that it unites with it the properties of an *arrow*—an arrow with *barbs* to it—an arrow too firmly fixt

“and they ought to be *well* remunerated; for if you would have men fit for the station of Judges, the high and intellectual species of labour you expect from them ought to be *amply*, but not *extravagantly*, paid for. But what I say in point of *principle* is, that, generally speaking, their remuneration ought to be by salary, and *not* by fees.”

to be ever drawn out; especially out of bosoms—noble and honorable bosoms—so little disposed to part with it.

“Judges should be *remunerated* for their labor:” here we have the wedge in the place into which it has been introduced—simple insertion into the prepared fissure. “They ought to be *well* remunerated:” here we see it in the place made for it by the first stroke given to it, “Their labours ought to be *amply* not *extravagantly* paid for;” here we see it in the place made for it, by the second stroke, which some may think is rather a bold one.

Look once more at this same “principle,” with the propositions it consists of: do but see what nice, sweet, innocent, unobjectionable things they are—“Judges should be remunerated for their labours:” well then—where is the labourer that ought not to be remunerated for his labour?

So much for the *first* of these his three commandments: look now at the *second*; and the second, may we not see, is “like unto it.”—“Judges ought to be *well* remunerated.” See here too: be he ever so perverse—be he perversity itself, exists there that man that can be perverse enough, so much as to wish to say, or if he be, with all his ingenuity ingenious enough to find anything to say, against this? Put it to him to find if he can a thing which if done at all ought *not* to be *well* done.

So much for the *second* of these same propositions. Now for the third and last—“Judges ought to be *amply* but not *extravagantly* remunerated.” So here again: be the men who they may, especially men whose labour is so “high and intellectual,” so as it be not *extravagantly* can there be any harm in its being *amply* remunerated?

So much for *quantity*: now as to *shape*: for receiving justification, and thus completing the operation, nothing now remains but *shape*.

Not less triumphant will this justification be seen to be than that *other*—“Judges,” we have seen already, “ought to be *well* remunerated:” but if they *are well* remunerated, how can their remuneration be otherwise than *good*? and *good* how can it be unless it be so for all purposes it is required for? Well then: in the present case, of these same purposes there are two: for one of them *salary* is required; for the other, *fees*. Now then these same Judges, learned as they are, pure and disinterested as they are,—still are they, after all,—still are they, alas! but men: accordingly, not an inch will they budge, without the *stimulus*—without some little gentle touch of it. Well then, as to the expense of this same necessary tickle-toby: is it for the public to be made to bear the whole burthen of it? the individuals bearing no part of it? the individuals by whom is reaped the whole of the benefit of the “*high services*?” the interest of the whole public, is it to be made a complete sacrifice of, to the interest of a handful of individuals? Forbid it, Justice!

Let it not pass unobserved that that which under the name of a “*principle*”—one principle, namely “the fourth principle”—the last in the train of principles we have been seeing, is (as the reader may have observed) a sort of a principle with three *heads* to it: a sort of *Cerberus*, employed to guard from spoliation the so-ingeniously-discovered and about-to-be-so-well-worked mine, with its treasures, composed of salary *and* fees.

Be that as it may, by hook or by crook, everything is now settled. Now have we, in the words of an old toast, an old Oxford toast, “all we wish, and all we want, and all our wanton wishes:” here have we completed this same delicious compound, composed of *salary with fees*. Now may we write Q. E. F.; for now is the problem solved. Solved? and by what but by the twaddle.

Before we have done with it, view it in a still more enlarged point of view, and mark well how admirably well-suited to this its purpose is this same *twaddle*. Admire the stretching-leather it is composed of : extendible or contractible, as the occasion, whatever it be, may require.

Constructed upon the most approved models you will see this implement to be. Have you an *abuse* to establish or defend ? you cast your eye on it, of course, to see whether this same implement is applicable to it. To be applicable it must present to view a scale divisible into two parts which have no determinate bounds : for example in *physics*, the scale commencing at the most splendid light and terminating in utter darkness. In morals and politics you have a correspondent scale commencing with perfect *liberty* and terminating at consummate *licentiousness*. Look at the example, you will see in it the very sort of thing you want. You take it in hand, and proceed thus : *liberty* (you say) is a good thing, and ought always to be allowed ; no man can be more sensible of this than I am : but *licentiousness* is a bad thing, and ought always to be punished. Is there anywhere a *liberty* taken that you don't like to see taken ? you lay hold of it accordingly, stamp upon it the word *licentiousness*, and punish for it. In thus doing, who is there that can prove you have been doing wrong ? Who is there that can prove that what you have thus been punishing for is not *licentiousness*—is nothing but *liberty* ? To make this proof, he must show the bounds by which the *licentiousness* and the *liberty* are divided : he must exhibit that which has no existence.

Viewed upon this more enlarged scale, *liberty* it will be seen should be *amply* but not *extravagantly* allowed ; *licentiousness*, *amply* but not *extravagantly* punished.

Thus will it be with Judges, so long as they are taken from the order of Advocates—"the indiscriminate defenders of right and wrong." On the outside you see the robe of the Judge : but underneath it and for a lining, remains still the silk gown of the Advocate. Look at it through the glass here presented to you, the Judge's robe will be gauze, the gown scarlet satin underneath it.

Little boys in their cricket have every now and then a functionary, whose style and title is *Jack-on-both-sides* ; not on both sides at once, that being impossible ; but on both sides successively and alternately. So it is with a Barrister : on one and the same point, if not in one and the same suit, he will be for plaintiff at one time, for defendant at another : whichever he is for, that one will be everything that is good ; the adversary, everything that is bad.

When understandings are to be confounded and made dizzy, a party man, writer or speaker, may be on one side and the other, not only on the same occasion, but as we have been seeing at the same time, talking backwards and forwards in the same breath : not less easily may he be of the one party and the other at *different* times. As to Chancellors, true it is, that they have not often, if ever, been seen thus *vibrating*, or even *migrating*. But whence is this ? is it that they would not accept ? no : but that they were never chosen. But for this, to day his Lordship would be for Earl Grey ; because he loves *liberty* : to-morrow for the Duke of Wellington ; because he hates *licentiousness*. Would not this be the case ? Reader, look at what goes before this—look at what follows after it—and then judge.

Meaning to hold up to view an accommodating standard, Lord Bacon typifies it somewhere by the name of the *regule Lesbia* : when lying on the shelf it is strait, as rules should be ; taken in hand and employed, the right line, if wanted so to do, bends and is transformed into any sort of curve. Put together, "*liberty* and *licentiousness*" make a *regule Lesbia* : so likewise "*amply* not *extravagantly*." As to how this sort of implement came to be made at Lesbos, let any one who feels so disposed go and inquire : I have not time.

Think not that your attention—think not that all the attention you can bestow upon this subject—can be ill-bestowed : for this—even this—is the language in which all the depredation that has brought on the *Reform* measure has its support. "*Aptitude*" (says this doctrine) "*is as opulence* : " be the situation what it will, a man's aptitude for it will be exactly as the quantity of money you cram his pocket with : do but as his learned Lordship bids you—make but his remuneration *ample* enough—and, as it is written, "all other things needful shall be added unto you."—Yes : when the new Parliament meets, then by its order (as by a former Parliament in a case within my memory was done by a *book* *) should this same maxim—*Aptitude*

* *Droit le Roy* : Author, a man whose name began with a B (wasn't it Brode-

is *as opulence*—be burnt by the hands of the common hangman ; which, by the bye, is the only employment I would give him. One of these days may, perhaps, be seen in Honourable House, written up in letters of gold—*Aptitude is inversely as opulence*:—one of these days, when the inventor and demonstrator of it is no longer in existence to behold it.*

To the operation of cramming fuller and fuller the pockets of functionaries, on pretence of securing aptitude, what shall be substituted ? The answer has been already given—competition ; that is to say, on the part of all candidates in whose instance appropriate aptitude, in all its branches, has been made manifest by the test of examination, as above spoken of under the head of proposed amendments.

So much for the principles of the noble and learned Lord. Have you a curiosity to see a set of a different sort ? Turn then to some of those books, which have for their author a person who, when, by Whig nurses, Radical principles were to be overlaid at their birth, and Honorable noses were to be turned up against them, was spoken of as being a man who “knew more of books than of men:” turn to those books, and there you may see, for example, the two above-exemplified principles—the *greatest-happiness principle*—the *non-disappointment* or say the *disappointment-minimizing principle*. Is your curiosity strong enough to carry you any further ? go then to the principle which prescribes the conjunction of interest with duty—say the *interest-and-duty-conjoining principle*† ; thence, on to the principle by which *official aptitude* is asserted to be augmented, not in proportion as official *emolument* is *augmented*, but in proportion as it is *reduced* ;—these, with any number of others you please from the same mint. But by any one of these, were his Lordship to take it in hand (for, for the purpose of argument, even the *impossible* may be supposed *existing*), by any one of them, were his Lordship to take it in hand and make application of it from the Woolsack,—such a scene of nausea might be produced by it !—such a scene as delicacy forbids the mention of.

In order to its answering its purpose, in what state should a principle be ? *Answer*—It should be in the highest state of condensation ; comprised in the compass of two or three words, consisting for example, of a *substantive* with its attached *adjective* or (as some say) *attributive* : though the adjective may be a substantive used adjectively, and either the one or the other, or both, may be composed of words, two, or even in any greater number, so as there be not a verb : the words strung together in the manner of the name given to a Parliamentary Bill in the Votes, and the name given to anything in the German language. Now, then—say *here*, for examples, “*Greatest happiness principle*”—“*Non-disappointment principle*.” In this way, the *principle*, with its two or three words, exhibits the substance, and performs the office, of a *rule*:—of a rule, which, if expressed at length, would occupy perhaps more than as many lines. Now then, why employ the matter in *this* form, rather than in that of a *rule* ? *Answer*—

rick ?) ; an attorney, member of Lincoln’s Inn ; in Ireland he was hanged for murder : object of *Droit le Roy*—and that object very decently accomplished—showing that all the doctrines, which the most determined Ultra Tories could preach and wish to act upon, had for their support, and were fully borne out, by those delivered from time to time by learned Judges, from the time whereof memory runneth not to the contrary, down to the time then present or not far distant. Whether bespoken or no, the dose was deemed too strong to go down, even in the estimate of George the Third, and his Lord Chief Justice of *Bank le Roy* (Lord Mansfield) and other cabinet ministers : for disavowal, it was accordingly thus dealt with. I saw the book, and turned it over ; but did not buy it. For many years past, I have made fruitless search after it. Could a copy be recovered, a second edition might be enriched with valuable matter from Lord Eldon : a specimen may be seen in “*Indications respecting Lord Eldon*,” inserted into “*Official Aptitude maximized Expense minimized*.”

* See “*Official Aptitude maximized Expense minimized*.”

† This principle, it is true, we may, by and by, see his Lordship himself holding up to view—Yes : but how ? let *Pope* speak—

“Damn with faint praise, assent with civil leer ;
And, without sneering, others teach to sneer.”

Because, when thus reduced in bulk, it is, in every instance, *capable* of being made to enter, and accordingly always *does* enter, into the composition of a sentence: whereas a *rule*, and, in particular, the *rule* of which the *principle* is a sort of abridgment, can seldom find expression in a number of words small enough to admit of its performing this office.

In the instance here in question, not very exceptionable (it is true) on account of its length, how much soever on other accounts, is the form of words, by which expression might have been given to a rule, suited to the purpose of conveying the advice which it was his Lordship's purpose to give, and see taken: and this advice was of the number of those which, on no occasion, find established, in noble breasts, any more than in honourable ones, any violent aversion to them—any very obdurate reluctance either to the receiving, or to the acting upon them.—*Make the remuneration of all offices as large as the people will endure to see it made*; in these words may be seen the *rule*:—*that noble and honorable younger sons, and eldest sons during the lives of their respective noble fathers* (not to speak of said fathers themselves) *may be provided for as nobly as possible*: here may be seen the *reason* of the rule.

Now for the conclusion of this same principle—"What I say in point of *principle* is that, generally speaking, their remuneration ought to be by salary, and not by fees." "And not by fees"—see here *profession*:—for *performance*, see his Lordship's Schedule the second, with its eleven sources, out of which *fees* are made to spring. All this talking backwards and forwards we have had, and here we have the result of it: and thus we have before us, and in senses more than one, his said Lordship's *principles*.

If, in the exposition above given of these same so-stiled principles, any errors should be found, the cause of them may perhaps be—it may at any rate be thought to be—in the author's being in that case in which in days of yore he was by the Noble Lord looked upon as being—namely that of one "knowing more of books than of men." Assuredly, whatsoever in this particular may be the case with other men, to myself it has not happened for so many days in the year as it has to his Lordship to be in the midst of, and have for the subject of *knowledge*, the noble brotherhood of those high and mighty Lords, who, on every occasion, as they never cease to bear witness, have for the sole objects of their care, church, king, and people (church first, then king, then people), with only now and then a small scrap of care for their respective families; and even this never otherwise than in due subordination to that care paramount, which has for its objects the said church, king, and people: too noble, each one of them, to take any thought for himself, had he not his noble friends for flappers: their motives, accordingly, on each occasion, diamonds—diamonds of the very first water—water of the purest kind, scorning the use of filtering stones; their breasts having for composition and covering, instead of flesh and blood, plate glass; having—that is to say, either having already, or at least (as was the case with a certain Noble Lord in former days when he with "all the rest of the *talents*" were in power) wishing that they had,

Let me not here be accused of exaggeration. In all this, no more is there of exaggeration than had place in the language of the Noble and Learned Lord when, A.D. 1828, on the 7th of February, in his character of law reformist, he came forward with that glorious undertaking of his by which, "all exaggeration" expressly denied, perfection was virtually promised to the Judiciary Establishment, with its system of procedure—all by so simple an operation as that of taking in hand any twelve men, so they were but called good and true, putting them into a box*, and thus, as in an *omnibus*, travelling them over the whole field of Judicial Procedure.

To return to *purity*. In this same state of purity his Lordship will not deny them to be—noble lords,—noble, and most noble, right reverend, and, above all, most reverend,—all of them together. No, assuredly; for in it, lest it should escape the memories of this "manner of men," never is he tired of reminding them that they are.

As to those Judges who will have to bow down to him and hail him as

* Self-published Speech of Henry Brougham, Esq. M.P., 7 Feb. 1828, on his motion for a law reform commission, p. 5.

So much for *Mr Brougham*: Come we now to *Lord Brougham*.—*Mirror*, 22 Feb. 1831, p. 409—"When you remunerate a Judge by *fees*, according to the *steps* of procedure, you expose him to the temptation (a) of encouraging *delay* and *expense* in order to increase his own emoluments, and thus in *theory* at least, if not in effect, you set interest in opposition to duty. To be sure, the Judges in the higher courts are not apt to be swayed by such feelings from the straight line of their duty, whatever be the temptation (a). They are men standing in a high and conspicuous station—men selected for their unspotted and unimpeachable integrity (b)—as well as for their great experience, and general fitness (c) for their exalted stations. They are likewise under the observation of a watchful public (d), and a jealous Bar (e), and many of them have seats in either

their Creator—those, to wit, whom we shall see him alluding to under the name of "*higher Judges*,"—they are not it appears regarded by him as being in that state of absolute purity, after the manner of pure gold rendered so by having passed through the refiners' fires: some little alloy of a less noble metal we shall find his discernment recognizing in them: encompassed as they are with "*temptation*," they may be conceived at least, if not absolutely believed, to be, capable of yielding to it: for their being brought into that same desirable state there needs however but one simple and obvious recipe, which is their being placed in that same exalted and purifying situation of theirs, in which all men and all things are pure.

To these Judges, the said creator, of course, considers himself as aggregating his said creatures—his chief and "*other Judges*," and by that same simple operation enduing them with the requisite portion of *purity*: in which glorious state we shall for the moment leave them.

Thus much for the entire foundation of the noble and learned lord's magnificent edifice: the foundation, composed as it is of "*principles*," four in number; of which principles, the third, when it comes to be laid down, is styled not a *principle* but a *proposition*, and the fourth, which is styled a *principle*, is not a *principle*, but a composition composed of three *propositions*—namely, the three propositions which the reader has been seeing, and with which, in a degree best known to himself, he cannot fail to have been edified.

(a) [Temptation.]—Behold here—and not here only, but in page 415 also, the noble and learned eyes wide open to the *temptation*, and at the same time the noble and learned mouth saying its prayers to the Lords and beseeching them to deliver him from that same evil, into which, at that same moment, he was doing what depended upon him—he was putting his rhetorical powers to the stretch—for the purpose of leading and plunging over head and ears himself and the whole train of the creatures he was occupying himself in the creation of. Witness schedule the first of the *Bill* in question, in the last edition of it. Witness the *Act*, into which in due course, it was predestinated to be transfigured, with its schedule the second, and the several fees contained in it.

(b) [Unspotted and unimpeachable integrity.]—Scene, *Utopia*. Of the romance so intitled, characteristic features are effects—felicitous effects—existing without causes: figs growing on thorns; grapes on thistles.

(c) [Fitness.]—By what means ascertained? Here you have the *effect*: and where have you the cause?

(d) Over men such as they are, and selected as they are, what need of any such or any other inspectors?

(e) [Jealous Bar]—interested in all the abuses by which the Judges in question make their profit; anxious to be raised to the situation in which that profit grows, and in those same situations to come in for shares in that same profit: eyes closed, as is the oyster shell against the knife, against those same abuses. Jealous, men such as these? O yes: but of what? of everything which can lessen the abuse, or prevent the augmentation of it: such being their interest, and without so much as a duty, as in the case of those same Judges, for a counterbalance to it.

" *House of Parliament* (a), where they may be called upon, as responsible officers, to explain any part of their conduct which may be considered objectionable. Nevertheless I am of opinion that public men, however high their character may be, ought not (b) to be placed in circumstances in which their interest comes in conflict with their duty. But even if it were certain that his interest would succumb to his duty, it is of the greatest importance to avoid placing a Judge in a situation where he must be an object of jealousy and wary suspicion (c).

" Such are the grounds on which I contend that even the *higher Judges* (d), who act under the eye of a watchful public and *jealous Bar*, and who

(a) [In Parliament]—Occupying thus two incompatible situations: undertaking the fulfilment of two duties, the conjunct fulfilment of which is (unless one and the same man can be in two different places at one and the same time) physically impossible; one of them, a situation in which, if accused, each man will be his own Judge; and thus, by the assurance of fruitless and uncompensated odium, stopping the mouths of all who might otherwise be accusers, and enjoying the assurance of impunity for every profitable and every agreeable mal-practice.

(b) [Ought not]—Yes; of opinion that they ought *not*: and this at the close of a string of arguments, for which the noble and learned brains have been put to rack, for the purpose of making us believe that that which, in consideration of the danger, "ought not" to be done, may, under and in spite of that same danger, be nevertheless done; and which he, accordingly, proceeds to do.

(c) [Suspicion]—Whereupon, having strained every nerve, and squeezed out what is above, for the purpose of satisfying us that *fees may* be allowed without the production of preponderant evil, he says they ought *not* to be allowed: and thereupon proceeds to allow them to the Judges, of whose benefices *he* is patron, and whose profits are accordingly *his* profits, and for whom, for the multiplication of those profits, he provides the *occasions*, twelve in number, which form the matter of the second of the two schedules.

(d) [Higher Judges.]—Higher Judges indeed?—as if, in those same *higher Judges*, the appetite for fees were less rabid than in the cryers of their respective courts; as if the existing system, with all its atrocities, by which the cry for law reform has been called forth, has had any other cause than the rabidness of the appetite of those same Judges, and those "whose estate they have"—with their hunger and thirst for the delicious matter of which those same fees are composed.

"Men of learning and integrity! . . . least likely to be swayed by interested and selfish considerations," . . . men of whom it is barely "possible for any one to suspect, that they *can* have any other object than that of the diligent, active, and impartial performance of their respective duties," such are they, under the painting brush of his Lordship: in a word, the *in facie Romuli* notwithstanding, as to every thing but sex, youth and beauty, so many Cæsars' wives in small clothes are these same learned Judges.

Behold here the imagination of the then learned, and now noble and learned rhetorician, mounted in one of his air balloons, and in its way to the moon touching at the planet *Utopia*, and, in the person of one of the Judges of that region, thus sketching out the portrait of a Westminster Hall Judge. Now then,—these vagaries, were they mere flights of poetry in prose, flights taken for mere self-amusement or a *Forget me not*, no notice would, on this occasion, have been taken of them: had they been the production of a Westminster school boy, a silver groat would have been given as an appropriate reward for them. But no! all this is acted upon—acted upon as if it were literally correct and true; and accordingly the means of self-payment *ad libitum*—the means of gorging themselves with the plunder of the afflicted—secured, in so far as words from this quarter can go, secured in and to the hands of these same Judges.

Men the most distinguished for their success in "the indiscriminate defence of right and wrong," by the indiscriminate utterance of truth and falsehood—men the most

“ are themselves men of *learning* and *integrity*, the least *likely* to be swayed
 “ by *interested* and *selfish* considerations,—that *even they* ought not to be
 “ placed in situations in which it is *possible* for *any* one to *suspect* that they
 “ can have any *other* object than that of the diligent, active, and impartial per-
 “ formance of their respective duties. Now, if this be the principle which
 “ ought to be kept in view, in reference to the *higher* Judges, it is *still more*
 “ *important* to act upon it in reference to all inferior officers of justice.
 “ They do not stand upon such *high* and *open* ground—they are not so
 “ much in the view of the public—they are not so *immediately responsible*
 “ to Parliament—and they ought to be emphatically excluded from such
 “ situations, even if the Judges are not.

“ There is one *nicety* in regard to this point which ought to be noticed.
 “ A Judge doing his duty under the eye of the public will be induced to
 “ perform it well and diligently, since upon its due and diligent performance
 “ will depend his fame and estimation with the public, and this although
 “ he should be remunerated by a salary and not by fees. But it is not
 “ always the same with inferior officers; and I am told that in *Ireland*,
 “ where an alteration similar to that which I propose relative to the Judges
 “ has been made, some inconvenience has been felt from remunerating
 “ inferior officers by salaries instead of fees; for it is said that the
 “ consequence has been, that these officers are disposed to earn their
 “ salaries more easily than, and not so well as, formerly, and that they do
 “ not perform their duties so actively as if their remuneration depended on
 “ fees.

“ But I think the *true distinction* may be made, and the *line drawn*
 “ *somewhat in this direction*. Those officers may be made dependent on fees
 “ *altogether, where the multiplication of the fees shall not depend on their*
 “ *own discretion.*”

distinguished for their success in the most mischievously and shamelessly mer-
 cenary of all professions, presumed thus to be above all others most disinterested !
 and *cui bono* ? for what all this laudation ? for what but for “ valuable considera-
 tion ?” By successful laudation of a prosecuted murderer or swindler, nothing more
 was to be got than the fee—the five guineas, once paid : whereas from the lauda-
 tion thus bestowed upon every man on whom a Judgeship shall have been bestowed,
 that profit was in contemplation which has accordingly come into possession—
 namely the profit composed of the difference between a bounded mass of emolu-
 ment in the shape of *salary*, and an unbounded ditto in the shape of *fees*.

Oh the ingenuity !—the exquisite ingenuity of this contrivance !—A time there
 had been, when, the purpose being thought to require it, condemnation was
 passed by him on that pestilence, and, reasons on that side being in existence—
 reasons, and those unanswerable ones,—those same reasons, or some of them, were
 accordingly adduced. Now, the plague being now to be inoculated, what was
 there, that, for this purpose, after what had been done, could be done ? what was
 there that the nature of the case furnished and admitted of ? To answer this ques-
 tion, and do what it was possible to do towards undoing his former untoward
 doings,—behold him taking in hand this same infection,—and, to put it in good
 odour, infusing into it the only semblance—faint as it is—the only semblance of a
 reason that the nature of things allowed the power of ingenuity to find for it. This
 is a use which it *would* be capable of being put to—but in what case ? In a case
 which can never happen. Having thus taken the benefit of the only chance of suc-
 cess, which he saw the nature of things furnishing, then it is that he turns round—
 takes in hand this bit of a reason, such as it is, and employs it in the propagation
 of the profitable pestilence, and thus repairing the antecedently false steps.

Mirror, 22 Feb. 1831, page 412.—“If those allowed to remain were made not *dependent* on fees, that would be an improvement (a).”

(a) Improvement! O yes: a capital improvement. *Dependent—independent—*capital, delightful tools to work with—to work well with—this same pair—this loving pair—not the less loving by being opposites. Yes: here we have again our old acquaintance—*Aptitude is as opulence*. On the former occasion, it was the *intellectual* branch that was to be provided for: provided for, but in joint tenancy with the two other branches—the *moral* and the *active*: the provision now made has the moral branch all to itself.

Aptitude is as independence—this is the maxim now: and can independence be too complete? No, surely. There we have the *maxim*. Now behold the *application*.

Be the man who he may, either he is already rich, or he is not: if yes, in that case, be he ever so rich, he cannot be made too independent. If he is *not* rich already,—in that case the reason is the same, but the need is more urgent; and the quantity needed is the greater the further he is from being rich already.

Everything cannot be done at once. Stinginess—just now stinginess is the order of the day. Stinginess being so much in fashion, his Lordship feels it prudent to content himself with his fifteen hundreds a year, his two thousands a year, and no more than one three thousand a year: and so, for some time, things must perhaps continue. Wait awhile, and there sits Sir Robert Peel, who has a book, a leaf out of which his Lordship has at command, and may borrow with advantage. Sir Robert is a great admirer of Lord Bacon: he is brimful of the Noble Philosopher and Chancellor, he has him at his finger's ends. The great departed Statesman is *prayed in aid*, as we lawyers say, by the great living one, when any of his great things are to be done. *Fiat experimentum* was the characteristic motto, on the strength of which the fame of Bacon has soared to a height so much above that of all other men. *Fiat experimentum* was the motto of Lord Bacon; *Fiat experimentum* is the motto of Sir Robert; he is for doing all good things gradually; he is for *consolidation* to the exclusion of *codification*. He is for going on giving to every man the possibility of knowing what he is to be punished for not knowing: going on—but at such a pace, that after some hundred years employed in doing it, the business would be still to do; and at this rate of travelling his Lordship may, at any time, without prejudice to his own plans, be in full accordance.

Now then for one of Sir Robert's practical comments on Lord Bacon. Behold it in the Stipendiary Magistrates' Salary-raising Act. At the first institution in 1792 it was £400 a year; in the eyes of the magistrates themselves this £400 a year was sufficient; plain proof—if not, they would not have accepted it: to them, it was satisfactory: *Patrick Colquhoun*, whose activity was greater than that of all the others put together, and who in all other respects was fully equal to the best of them—Patrick Colquhoun, who was known to everybody, and the only one of them who was known to anybody,—said as much to the author of these pages. But, though in the eyes of the *incumbents*, there was enough of it, not so was there in those of the Noble or Right Honorable *Patron*, whoever he was: and so it was made half as much again: it was made £600 a year:—well, what followed? When they had got it—this same £600 a year—still they were not everything that could be wished. Thereupon, came Sir Robert, and gave them a couple of hundreds a year more; the £600 he made £800. Now then, what was to be done with this £800? As to future men there was no difficulty. But then, there were the then present ones: what to do in regard to them. What?—Oh, they were entitled to it on a double account; so indifferently had they behaved themselves, that for this reason it had been found necessary to give them the £200 a year more, to make them behave better: at the same time, so well had they behaved themselves, that gratitude joined with equality and consistency in requiring that these known and tried men, by whom such merit had been displayed, should not be left unrewarded, when the resolution was taken, that men unknown and untried should be thus advanced. Still this was but a sort of degeneration: for at the first augmentation they got half as much again as they had before; and at this second they got no more than one third as much. But Sir Robert was faint-hearted: his Lordship is made of better

February 22, 1831, *Mirror*, p. 414.—In page 414, immediately before the mention of a *bottom*, mount up to the text, and therein, thus you will find it written:—"That Noble and Learned Lord (Lord Eldon) laid a report on the Table of this House respecting the taking of *fees as salaries*, in which, on examination, your Lordships will find some *excellent* principles laid down. Another report was presented to the House in the year 1798, in which the subject of fees is *again* taken up. It is there said, that no inquiry should be made whether a fee was claimed by *established practice*, but whether it was one which *ought* to be continued, and, if it was *not*, it should be *cut off*. Accordingly it was recommended that *some* of the fees then existing should be abolished, and amongst others those called *copy-fees*, as unfit to be continued. I might also instance the recommendation of the Chancery Commissioners in 1826—that fees *as salaries* in *most* cases should be done away with (a)."

metal; and he will act accordingly; let but occasion call, and, casting off all disguise, he will stand up and say (speaking of his batch of Judges with their followers)—Yes; the worse they behave, the more they shall have. The only man he can be afraid of is—Sir Robert Peel; and, on this ground, Sir Robert will feel his mouth stopt; stopt by a precedent of his own making; stopt—or (as we lawyers say) *estopped*—prevented by an *estoppel*.

In regard to *objects*, one man has one sort of object; another man another sort of object. Then, in regard to *experiments*—experiments in pursuit of the object—one man is for one sort of experiment; another man, for another sort. My object is a double one: to secure official aptitude, and to save money. For securing the aptitude, I have the *securities* hereinabove referred to, and hereinafter exhibited: for saving the money, and at the same time and by the same operation providing those same securities, I employ an already approved instrument:—yes: the very instrument, which in all other cases everybody is for employing, and employs accordingly. Good: but this instrument—what's the name of it?—The name of it? why—*competition*!—Now for an exhibition. Scene, Right Honourable House. At the sound of the word *competition*, out pours a deafening scream in grand chorus—Competition! "O horrid, horrible, and horridest horror!" The cry subsided, and the faculty of speech, and something in the guise of argumentation retained, comes thereupon something to this effect—Competition? yes: good in every other case: good, as applied to furnishers of *goods* of all sorts: good as applied to furnishers of *personal services* of all sorts:—yes: good in *those* cases: but, in *this* case, what can be more absurd. Absurd? what? are not *official services* *personal services*? Yes: but these must be excepted. Excepted? and for what reason? For what reason? O don't talk of reason. No—not on *this* occasion: occasions there are, on which there is nothing for reason to do: matters there are, which reason has nothing to do with, nor they with reason: matters, if applied to which, reason is out of place. Yes:—that there are; and this is one of them.

So much for Right Honourable House; and, to save trouble, the same scene may serve for Honourable House.

Mark with what refinement and astutia it is worded—this so-called *improvement* of his Lordship's. Is it that there shall be no fees? Oh, no: only that, how much soever there is of them, the learned persons are not to be left "*dependent*" on them. Accordingly, in the first place, there are to be fees, at any rate: this for the sake of the *stimulus*; and, as to *what* fees, see section the second, as above. But whatever may turn out to be the amount of those fees, what a sad thing would it not be, if men were left dependent on them? and, so uncertain is that amount, would not this be the case, if something certain were not added? Thereupon comes the necessity of a salary; which, as independence cannot be too complete, cannot (so you have seen already) be too "*ample*."

(a) [Done away with.]—A delicate matter this:—a truly delicate matter: and, each time, what is it that has been done? *Answer*—Just what was intended to be done.

22nd Feb. 1831, *Mirror*, pp. 414, 415.—“Bottomed on these recommendations, I propose to your Lordships that *no fees* shall in future be

Anno 1798 was made *one* report, and what was done? that which had been intended.

Anno 1826, another: and what was done? that which had been intended.

Anno 1831, was made this speech; this speech made, and in pursuance of it a Bill brought in, and that Bill passed into an Act. And now, what was intended to be done? *Answer*—That which has been done accordingly. Here is a malady—a most excruciating malady; compare the operators, and note their several performances. The former operators confirmed it; but they did *not* exasperate it; this last operator has confirmed it, and he *has* exasperated it. Immediately in his schedules will this be seen by readers, and in process of time, as the Act comes into operation, felt by suitors.

“*Fees as salaries!*” no:—*et sic vide diversitatem*, as Lord Coke says. Take them not *as* salaries. No; take them as something else: take them as anything else: for example, as constituting a *stimulus*; and, by the first opportunity let men “behold how good and joyful it is”—call it “a *fair stimulus*.” Capital indeed is this distinction! choice the discernment exemplified in the making of it: behold the stress laid upon it; figure to yourself Learned Lords and Learned Gentlemen, one after another, mounted upon it a cock-horse, and riding off upon it.

“*Excellent principles.*” Yes, excellent principles doubtless. But what *were* they? (says a reader). What were they? answer I, this is more than I know; and I will spare to *myself* the labor of looking out for them, and commenting on them, and to you the labour of reading them; what he has now before him may surely, and without injustice, be taken for a fair sample of them. And the result of them—what is it? It is this; be the fee what it may,—if it ought not to be continued, it ought not to be continued; if it ought to be cut off, it ought to be cut off.

But, even after taking the benefit of this reservation—of this distinction, in virtue of which they might be taken, in so far as they were not taken *as* salaries—not taken *quâ* salaries,—even they—all of them—all the ingredients in this sweet paste—are they to be done away with? Oh, no; that would be carrying things *too far*; *some* of them, yes; but only *some* of them. Thus far anno 1798. But, anno 1826, with the benefit of a course of consideration carried on during the interval of eight-and-twenty years,—learned lords and gentlemen had stretched their legs, in such sort as to have got a step farther; the recommendation (as we see) then was—that “*fees as salaries* should, in *most* cases be done away with.” What? not in *all* cases? not without the benefit of this distinction? Oh, no: What? and, not even *with* the benefit of this distinction? No: not even in this case: that would still be going too far: only in *some* cases, whereupon in all the other cases, in every one of which the same sort of mischief is produced, they remain established. Behold the problem solved; *quod erat faciendum est factum*; and $x = y$ are found to be $= 0$.

Hang half and save half, says a familiar adage; this adage learned lords and gentlemen have taken in hand, made it into a maxim, and improved upon it; say *hang half and save the whole*—saying this, you have it in its improved state.

Look at the fees called copy-fees; on them may be seen a mark set,—they are marked out to serve as a scape-goat to be sacrificed: to be sacrificed? and why? that the rest may remain unsacrificed, and be saved. But this scape-goat, *was* he thereupon sacrificed? has he *since* been sacrificed? *Quære ceo*. Is he intended to be sacrificed? Wait and see.

Directions to public servants, such as legislators and reporting chairmen of committees; taken from Dean Swift’s “*Directions to Servants* :”—When you have anything to report upon, what honest men wish to see done away with, and you do not like to part with, recommend that it shall be done away with, but take care that the quantity so recommended to be done away with, shall be an indeterminate quantity; “*some*” for example; or in case of pressure, you may even say *most*: in the *tout ensemble* of this recommendation, people will see your *good disposition*, your *good intention*: in the qualifying adjunct *some* or *most*, they will

“ taken by the *Masters*, and I would have those of the *Clerks* so regulated
 “ as never to exceed a *fixed maximum* (a); and that while all great *tempta-*
 “ *tion* (b) to multiply forms, and create delay and expense to the suitors

see your *caution*—your *prudence*. Seeing all this, how can they be so unreasonable, these same people, as not to be satisfied? Well then; if they are satisfied, then *everything is as it should be*: and there the matter rests.

And, what if they *had* been intended to be abolished? what if they had been abolished accordingly? that is to say, in so far as it was and is in the power of Parliament to abolish them. What then? Ask Lord Tenterden. The *Table* of these fees hung up or not hung up—hung up, and in the sight of everybody—the fee in question being of the number; will it be thus kept from being exacted? Oh no: not it, indeed. It will not the less continue to be exacted; at any rate, if it be under and in virtue of a situation the patronage of which belongs to his Lordship. Well; but suppose a table of fees established—a table stating the several *occasions* on which fees may be taken and the fees that may be taken on those several occasions, and on this or that occasion a fee taken to an amount greater than that which is so allowed—suppose this done and the extortion brought before his Lordship, will not the extorter, as such, be punished for it? Oh no. What then? Why, restitution will, perhaps, be ordered. Suppose, for example, six shillings the amount of the fee allowed, and ten and sixpence the money taken, you have but to make application to the Court; and so it be not in the way of a criminal prosecution, but in a quiet *civil* way, it will cost you not more than some number of times as many pounds as the shillings you sue for; and restitution of the whole ten and sixpence, or of the four and sixpence difference, will or will not be ordered*: and *os toties quoties*, as often as you please.

There you see the power of Parliament. There you see the effect of it, when applied with the purpose, entertained or pretended, of preventing extortion by, or in any way direct or indirect to the profit of, learned Judges.

(a) [A fixed maximum.] Each fee a sum determinate and *unincreasable*? Yes—if indeed *that* be the meaning, so far so good. But of those same unincreasable sums, suppose the *number* left *increasable*, *ad infinitum*,—increasable, at the pleasure of those whose profit rises in proportion to the aggregate amount of them; increasable, by means to the existence of which the noble and learned eyes were open, in the manner and to the degree that we have seen: and these sums accordingly, by those same noble and learned hands, put into the pre-eminently learned though not ennobled pockets; between which and the noble one there is a communication. Suppose this, and you will see in what way it is that, upon his Lordship's plan, “all temptation to multiply forms, and create delay and expense to the suitors” is to be removed: moreover, here again comes the “*stimulus*,” for, whether *by* or *notwithstanding* such removal, “enough (their Lordships are assured) will be left as a fair *stimulus* to the *speedy* dispatch of business.” For refreshment, preparatorily to this part of the speech, instead of an orange, presents himself here to my imagination his Lordship taking out of the learned pocket a bottle, and out of the bottle a good swig of *Lethe* water, to enable him to forget that in the case of an office sweetened with emolument, as the office has, so has the patronage of it, a determinate value; and that this value rises, and that in a determinate proportion, with the value of the office.

Fixt or *unfixt*—in one or other of these two cases must be the amount of this same *maximum* of this same *muriate of gold*: if *fixt*, off flies the *stimulus*; if *unfixt*, then flows in the *temptation*—that temptation, which, by men in the situation in question always has been yielded to—that temptation which so long as man is man, will continue to be yielded to—that temptation which, seeing all this, and seeing it so absolutely irremoveable, his Lordship is so determined to “remove.”

(b) [Temptation.] Yes, here we have *temptation* again. Already we have seen him stating what the temptation is—showing, demonstrating, and by uncontrovertible reasons, that it is one which no Judge nor any officer in an office subor-

* In *Official Aptitude Maximized, &c.*, see *Indications respecting Lord Eldon*, pp. 36 to 45.

"are removed, enough will be left as a *fair stimulus* (a) to the speedy dispatch of business."

22 Feb. 1831, *Mirror*, p. 415.—"These high incomes from fees are not confined to the Masters. Their *Clerks* also have incomes averaging about 1600*l.* a-year each: two have as much as 2500*l.* There is one only who has as little as 1000*l.*, because, in his case, I think very properly, it was refused to allow any fees to be taken. I must own I look upon *those* '*gratuities*,' (b) as they are called, as in every respect most objectionable.

dinate to that of Judge, ought to be exposed to; and thereupon, eyes wide open to the irresistibleness of it, and the mischievousness of it, comes the determination to expose them to it—to expose them to it, all of them, Judges and their subordinates, together: which said determination we have seen accordingly in his Bill, now passed into an Act, carried into practice.

Yea, verily;—here have we this same *temptation* again in this same speech, taken into consideration a second time—laid before their Lordships and the public a second time; and the consequences of it a second time full in view; the determination a second time formed—the determination to expose his Judges to it—his Judges and their subordinates,—and thus to bring upon the whole country the evils so fully in his view—the evils of factitious expense, delay, and vexation, with their accompaniments, *denial* and *sale* of justice:—sale of it to the comparatively few—denial of it to all besides, that is to say to the vast majority of the thus oppressed and plundered people.

But for all this evil, a compensation—a *per contrà*—is now and in the same breath spoken of as provided: and by this same *per contrà* we are to understand the evil to be overbalanced. And this same *per contrà*—what is it? It is neither more nor less than a *stimulus*—namely, the old *stimulus* which we have seen already, and which, for the present purpose, is, on the present occasion, again brought forward,—and, in that its former character, re-exhibited.

(a) [Fair stimulus]. Yes; sure enough, here we have another old acquaintance—a very old acquaintance. It has now, however, received a considerable improvement. In the former instance, on the former occasion, it was a "little" one; that was the best and the most that could then be ventured to be said of it. The time being (it seems to have been thought) come, the epithet *fair* is applied to it, and with this polish put upon it, it is presented to us for acceptance: and such (it seems) is its virtue, and so ample the service it always has rendered and never will fail to render to justice, that the good effects of it are regarded as overbalancing, as just mentioned, all the evil ones apprehended from the *temptation* in conjunction with which it is now mentioned.

The case (as we have seen) is—that, for the measure in question—namely, the establishment of the mode of remuneration thus (as we have seen) exposed by his Lordship—for this measure, composed of the real evil and the imaginary good, by which that same evil is supposed to be overbalanced, he has now (you see), if you will believe him, found a *bottom*. By this *bottom* (it must be presumed) what is meant is a *justification*. The justification being thus pleaded, it would be injustice not to exhibit it: here accordingly it may have been seen exhibited; and of the *breadth* of this *bottom*, if such it be, we have, as above, been taking measure.

Good Heavens! (says somebody) what a pother is all this!—all about a word—a single word! True: a single word; but, once more, think of what importance it is—this same word! Before you, you see a man to whom, in eloquence and deceptive language, scarcely does the whole country contain any known rival—this man you see calling forth his matchless powers—whatsoever of them he can muster—and employing them in support of this inexhaustible source of human misery—the practice of denying and selling justice—selling it to the tens of thousands, denying it to the millions, and thus devoting the millions to wrong without remedy: and in this one word is contained the whole of what the vast arsenal of his resources can furnish for the defence or so much as the palliation of the enormity: this considered, a few lines, or even pages, can they be grudged or justly taxed with superfluity?

(b) [Gratuities.] Confounded, in a manner, with fees, are these same gratuities

“ If I were not disposed to adopt a circuitous mode of describing those
 “ sums, as gratuities for administering what is called *justice*, I should be
 “ tempted to call them by that brief but expressive name by which the
 “ public would call them—‘*bribes*,’ and I shall be able satisfactorily to
 “ prove them such to your Lordships. These *gratuities*, or whatever other
 “ name they deserve, are *not* taken by the *Masters*; I wish they were, as
 “ then the *high character* and station of the Master would prevent the
 “ imputation, that for such things *justice was sold* in one of the highest of
 “ our courts. I could wish that, even in *that* case, the *temptation* did not
 “ exist; but, in practice, the taking them by the Master would not have
 “ the same bad effect as in the case of the *Clerk*.”

Page 417.—“ You do not do so in other cases;—in the Court of King’s
 “ Bench, for instance, you pay the Judges out of the Consolidated Fund.
 “ It may be correct to take these fees from the suitors, to levy on them
 “ all the expenses of the proceedings; it may be proper to make Chancery
 “ suitors pay the Judge on the Bench, and pay the expenses of the Chan-
 “ cery Court; it may be right that the suitors should be taxed—all this I
 “ will admit (*a*); but then I contend that no more should be taken from

—we see how. After speaking of “*fees*,” he immediately after, without having noticed any distinction, says “*these gratuities*.” Things in themselves so different, how came they here to be thus confounded? Foul as is the abuse of fees so extorted, as has been seen,—still fouler is the abomination, to which the name of *gratuities* has been attached. In the case of a fee, the quantum is fixed; in the case of a gratuity, it is unlimited: *predeterminate* limit it has none: limit it has none but that which is determined in each *individual* instance: determined, and, by what? by the *need* which the suitor has of the services of the functionary: that is to say, by the *evil* which it may happen to him to be afflicted with, if, at the time in question, those same services fail of being performed: by the amount of this *evil*, coupled with the *tempers* of the two parties—namely, on the one part, the degree of hardihood; on the other part, the degree of timidity. From one and the same solicitor, a bold functionary will exact any number of times the amount that a timid functionary would: from a timid solicitor, one and the same functionary will exact any number of times the amount of what he could from a resolute one: the *solicitor* I say rather than the *suitor*; the case being—that, throughout the whole field of regular procedure, matters are in such sort arranged, that, for the suitor to see to his own business—to look after, and take care of, and make provision for his own interest,—is impossible: the hands in which the care of it is lodged being those of a set of other men, in confederated swarms, of each individual of which the interest is, on each occasion, in relation to that of the *bonâ fide* suitor, in a state of diametrical and constant opposition.

(*a*) [Admit.] Somewhat wide admissions these. However, if given no otherwise than hypothetically, and for the purpose of the argument—not categorically and absolutely, let them pass. Let them not, however, pass unheeded—these grievances thus lightly dealt with: look at them a little more attentively.

1. Grievance the first; *Taxes on Justice*, or say *Law Taxes*, in the shape of *Stamp-duties*. For receiving on their shoulders a portion, whatever it be, of the burthen laid on the people, for the aggregate of the expenses of government,—selection made of the individuals already suffering under a particular affliction, in preference to those who are not suffering under any such affliction: the amount of this burthen varying, in unknown quantities, upon a scale of such length, that, in an unascertainable proportion, the victims even sink under it, and are completely crushed. Would you be consistent? To these same objects of your oppression add then the lame, the blind, the maimed—and those afflicted with the rheumatism, the gout, and the stone; and, for further consistency, if these be not enough, the orphan, the widower, and the widow, for and during the first year of mourning; all this for the purpose of keeping off the burthen from the members of the community at large, on whom, when distributed among them, it would lie but as an

“ the pocket of the suitor than goes to pay the expence of the Court and Judge. Instead of this, however, I recommend you to make the Judges of the Court of Chancery an annual ample allowance, and to discontinue

impalpable powder, the pressure of which would be altogether imperceptible*.

2. Grievance the second—an *abuse*:—taxes on justice in the shape of law fees. Persons selected for the being subjected to the burthen, the same; the produce carried to the particular account of the expense employed in the remuneration for judicial functionaries; some rendering more or less service, some rendering none. Distinguished from and above the before-mentioned is this second tax, by its capacity of being augmented—we have seen how—augmented to the utmost—by those whose interest it is so to augment it, and who, accordingly, to the power add constantly and on each occasion the inclination, the determination, and the endeavour so to do. To the burthen imposed, as above, by the *legislature* in the shape of *stamp duties*, augmentation cannot be made by any other hands than those of the legislature. To the burthen imposed, as above, by *Judges*, for their own benefit, augmentation can be made—made to an unlimited amount, and accordingly has been made—by the hands of those same Judges; and of course, unless and until the power of so doing is taken out of those same learned hands by the legislature, will continue to be made.

Not uninstrusive is the mutual relation and difference between the two grievances.

Nor should we here forget a vulgar error—an error which has been laid hold of and converted into a fallacy by those who profit by it. According to them, *taxes upon justice* (not that this is the denomination employed by them)—taxes upon justice, operate (say they) as all taxes do, in the way of *prohibition*, and thence in that of prevention: litigation is a bad thing; they operate, and in proportion to their amount, as preventives to it: they are as *bridles* in the mouths of the litigious. So says error; what says truth? that these bridles, supposed to be put into their mouths, are arms put into their hands; that is to say, if, and in so far as, under the appellative of *litigious* you include him, who in the burthen beholds a means of obtaining for himself an undue benefit, by giving effect to an unjust demand, or by depriving of effect a just one.

Not that they are not *bridles*: too true; bridles they are;—but on whom? On whom but the poor man; who, by the rich man, has been fixed upon as his victim. On him they are not merely *bridles retarding* his motions; they are *ropes*, by which his hands are tied behind him, his feet tied together, and all possibility of defending himself wrenched from him.

Taxes upon justice, checks upon litigation! Such being the doctrine,—read, mark, and learn, who the doctors are by whom it is propagated. They are the dishonest non-lawyer, and his ever-ready accomplice the fee-fed lawyer: the non-lawyer, who beholds in them, and finds in them, an instrument, applicable, and with certainty of effect, to the purpose of cheating his *creditors*; or on pretence of debt, wrenching property out of the hands of men who are *not* his *debtors*:—the lawyer, to whom every non-lawyer is what a sheep is to a wolf; and every brother-lawyer, what a wolf is to a wolf of the same herd.

By the lawyer, however, a distinction is of course noted—the distinction between the law taxes imposed in the shape of *stamp duties*, and the law taxes imposed in the shape of *fees*. The stamp duties he will probably not be averse to

* Of the above-mentioned arrangement, the mischievousness and blindness were demonstrated six and thirty years ago—demonstrated anno 1795—in *Protest against Law Taxes*, by the author of these pages; and taken off in pursuance of it was a considerable part of that portion, the produce of which, under the name of *Stamp duties*, goes to the public revenue for all purposes, and could not be increasable by Judges; this taken off, while the whole of the portion here in question—namely, that which has for its purpose the paying the Judges, and which is increasable by those same Judges, and to an unlimited amount, to and for their own benefit, was left on.

“ the present clumsy, unjust method of raising from the public and from
 “ the suitor three times as much as would pay the one Master and the
 “ one Master’s clerk, which are all that are necessary; while, by doing
 “ which, you reduce the Masters to the positive necessity, in these matters,
 “ of increasing the expenses:—not that I blame the Masters,—I blame

the abrogation of; on the contrary, he will rather be desirous of it: for, the greater the defalcation from the aggregate of those which are expences from which he does *not* derive profit, the more is left in the pocket of the suitor to be employed in that same suit, and in any other suits from which he *will* profit. In-so-far as he contributes to the removal of these bars to justice, he will exhibit an apparently good title to the praise of *disinterestedness*: he will wear the face of a law-reformist: and, in that character, he may look for more or less of that public confidence, by which he will be enabled, with more or less effect, to act in the character of an adversary to law reform.

So likewise even in regard to those taxes, the produce of which flows into the common pocket of the profession; so many *divisions* as that receptacle contains, so many groups of profit-seekers, from each of whom law reform may receive support at the expense of the others and without loss to himself.

By the *Barrister* class, for example, may be advocated reforms by which defalcation will be made from the profits of the *Solicitor* class; by the Common Law Barrister, from those of the Equity class; and *vice versâ*. So again, as between speaking Barristers and the various sorts of mutes called *Chamber Counsel*. In the power of any of these it may be without any considerable real sacrifice, not only to profess themselves reformists, but even to act as such, and thus exhibit the appearance of disinterestedness.

To the author of these pages, at various times, advances have been made by learned gentlemen, with whom he had not the honour to be personally acquainted; and, of the truth of the above observations, he finds, in every such civility, exemplification and demonstration.

Frequently is the observation made that already, even among *lawyers*, there are, and in increasing numbers, *law reformists*: but, if true,—as beyond doubt it is,—small indeed should be the extent, in which it is expected so to be; otherwise than subject to limitations and exceptions such as the above.

An example—everybody sees how illustrative as well as illustrious an one—may be seen, even in the instance of his Noble and Learned Lordship. Exemplary has been his devotion to that one of the infernal deities whose name is *Common Law*; strenuous his exertions to garnish the pockets of her votaries with prog, picked out of those of her sister *Equity*. Witness, *speech* of 1828: witness again the *Local Courts Bill*; with plan and speech touching and concerning the same. For this phenomenon would you find an explanation? Forget not to consider that at neither of these epochs were the Seals in immediate view, and that the learned labours continued still employed, moulding into the bespoken shape the contents of the wonder-working “ box.”

So long as he is *man*, thus will *man* comport himself: to be angry with him for so doing, is to be angry with him for existing. But where, and so far as, a man’s endeavours are in opposition to the welfare of the community, will any one say that by his not being a proper subject for anger, the need of a defensive force for its protection, as against them, is in any degree diminished?

“ Right to make the suitors pay the Judge on the Bench and pay the expences of the Chancery Court.” Yes: those suitors who have wherewithal to pay, though it be their uttermost farthing. Well: but those of them who have no farthing at all; whether the suit found them thus destitute, or took it from them; these men how are *they* to be made to pay it? No: to them justice is *denied*; to them, imprisonment is given in its stead: while, to those who have wherewithal to pay for it, “ what is called justice” (to use his Lordship’s so apt expression)—that same drug is *sold*, and continues to be sold, so long as they continue to have wherewithal to buy it, sold by, and for the benefit of, the Judges and the swarms of other Lawyers.

“contemplate effecting; and I have only shortly to refer to what I hope
 “will prove to be the benefits to result from their operation; and these
 “are,—a better decision of causes—a more full possession by the creditors
 “of Bankrupt’s estates—a more speedy administration of justice to such
 “creditors, and to all persons interested—a great diminution of business
 “and delay in the Court of Chancery—and even eventually, probably, the
 “saving of one of the Judges in that Court.”

22 Feb. 1831, *Mirror*, p. 419.—“I beg to remind your Lordships that if
 “I have cut off seventy places from those in the dispensation of the Lord
 “Chancellor, *I have also cut off 7000*l.* or 8000*l.* (a) a-year from his emolu-*
 “the system (a). My Lords, these form the bulk of the changes which I

(a) [The system.] Just twenty years ago—namely, anno, in 1811 the work intituled *Théorie des Récompenses*, by the author of these pages, this same *system* was “*blamed*,” if exposure of turpitude is “*blame*.” The system? Yes; and the said *Masters* into the bargain, if calling men and proving them to be extortioners and swindlers is blaming them:—blamed by him were system and men together, and thus freely, his eyes not being sharp enough to descry any such necessity as that which, to the Noble and Learned eyes, is thus manifest. Could they even have prevailed upon themselves to abstain from this mode of *swindling*, there would still have remained to them the faculty of increasing their emoluments *ad infinitum*, as above; there would have still remained to them, for example, the faculty of effecting the extortion of the sum of 570*l.*, in payment of a man’s name put by him to a paper without looking at it; an extortion, the fruit of which is continued to be fed upon in full security.

Swindling?—Yes: *swindling*—that is to say, “obtaining money” (as the Statute words it) by *false pretences*: presence *here*, that of having done this or that piece of business, which, in fact, had not been done: *attendance*, for example, averred to have been paid, at a time when no such attendance was paid—no such business nor any business at all on the occasion of or in relation to the suit in question, was, by the functionary in question, done. Before the public, ever since the year 1802—before the public, now for these twenty years, has been a work, in which this abomination is painted in its appropriate colours. *Desert* is a term, in relation to which I have on several occasions observed, that, though it is with propriety coupled with *reward*, it is not with propriety coupled with punishment: if, however, it be assumed to be properly coupled with punishment, punishment has been still more richly *deserved* by every man by whom that office has been occupied, than by any other sort of man to whom, in speaking of him, the appellative of *swindler* was ever applied: the swindler—a malefactor to whom, by the so-often-referred-to statute, punishment by fine, imprisonment, pillory, whipping, or transportation, was applied:—those several punishments, one or more of them, at the option and discretion of the Judge.

Thus then stands the matter. *Disease*, a complicated case—extortion coupled with swindling. Remedy, as prescribed by the Noble and Learned Doctor, *powder-of-post*:

Well: no longer (suppose) by the Clerk are they taken, those same fees—no longer by the *Clerk*; but according to prescription (prescription by the Noble and Learned Doctor) by the *Master*. Good: and what then? Why—that in the course in question they will keep going on—these same *Masters*: these same *Masters*, with their “*high character*,” and in their “*high station*,” going on, as they did in 1811, and have done ever since, unless by any very recent arrangement, unknown to me, it has happened to them to be stopped.

(a) [8000*l.* a-year.]—Whence this same sum of 7000*l.* or 8000*l.* a-year is come, is what I am utterly at a loss to conceive.

Among the House of Commons papers of the last Session is one numbered 314—date of the order for printing, 8th October 1831—intituled “BANKRUPTCY FEES. “No. 2. An Account of all sums of money paid by the Clerk of the Hanaper to the “Lord High Chancellor, in each of the three last years.”

48 OBSERVATIONS ON BANKRUPTCY COURT BILL.

“ments: *his emoluments arising from bankruptcy* amounted to the sum of
“7000*l.* or 8000*l.* a-year, every farthing of which will be cut off by the Bill
“I am about to introduce.”

“The Lord High Chancellor” (it goes on to say) “receives from “the Hanaper Office certain payments and allowances under his “Lordship’s patents, which amount in each year to the unvarying “sum of	£ 1096 19 0
“Deduct Hanaper fees	10 19 6
“Net sum paid to the Chancellor	£ 1085 19 6

Lost am I here in astonishment!

This same sum of 1089*l.* 19*s.* 6*d.*—is it not the whole amount of the emolument which in a Return, called for by the House of Commons, is stated as being derived from the source in question—the Bankruptcy business? This the amount really given up by his Lordship, and by his said Lordship 8000*l.* or at the least 7000*l.* a-year asserted to be the amount given up by him? an error, on such an occasion, to such an amount, and in such a proportion? and this in a matter to which his attention had thus pointedly been called for and directed?

Can it have been of anything less than the whole of the emolument derived from that source that this Order calls for, and accordingly the Return obtained by it contains, the statement?—True it is that the *Hanaper Office* is the only source from which the information is called for; but, had there been any other such sources, would not they have been, all of them, included in the Order, and consequently in the Returns? Of any such Order, what could be the object? what other than the ascertaining and bringing to light the whole of what the office filled by this high functionary was deriving from this part of the business of it? This—is it a sort of matter that could either have escaped his notice or his memory?

For the sake of round numbers, or from the hurry of debate, an error of a few per cent?—yes: but an error of 6 or 7 hundred per cent? an error of such magnitude in the conception entertained by a man of his own income? Not less distinguished for the liveliness of his imagination than for so many other brilliant accomplishments, is the Noble and Learned Lord: but an imagination that could carry a man thus far above the truth—is it not strong enough to carry him aloft upon the wings of it, till, as Horace in a certain case looked to do, he ran bump against the starry firmament?*

* Apprehensive of the guilt of misrepresentation and injustice, I have hunted out a Report made in a former year—a Report having for its subject-matter the aggregate of the emoluments received by the Lord Chancellor, in the Chancellorship of Lord Eldon. In it I find what follows: Date of Order for printing, 12th April 1827; No. 265; General Title, “Bankrupt Fees. Returns and Account of Receipt and Appropriation of Fees in Bankruptcy.” Particular Account, pp. 12 to 17, both inclusive,—“3. An Account of *all* Fees received by the Lord Chancellor’s Pursebearer, from *the* different branches of Bankruptcy business, in “each year from 1811 to 1826; distinguishing the specific appropriation thereof.”

In page 12, at the end of the account of the first of these years, namely, the year from “April 1811 to April 1812,” comes a statement in these words and figures:

	£.	s.	d.
“Total received for the Lord Chancellor, subject to the deductions of “a proportion of the salary allowed by his Lordship to his Purse- “bearer, which, according to the amount of other business, in the “Pursebearer’s account, is	933	16	6
	250	0	0
	683	16	6

In page 16—in these same annual accounts, the year in which the mass of emolument is at its *minimum*, is the year intituled April 1824 to April 1825; and in that year it stands thus

Deductions as before stated	651	0	6
	250	0	0
	401	0	6

What has been seen belongs to the account of *regularly* received benefits. Now, as to the sort of benefit *casually* received, in the shape of *patronage*.

22 Feb. 1831, *Mirror*, p. 417.—“First of all, there will be an *immense* reduction of *official patronage*; the scheme will convert *seventy* places, at present in the gift of the Great Seal, into *ten*.”

Page 418.—“But, if *twelve* be not too many—and they have to examine evidence, and perform many other important duties—and if *two Masters* (a) ought to be added, we shall cut off *seventy offices*, and have an increase of *eleven*. We shall cut off *seventy small offices*, and we shall have a *remainder* of eleven large ones.

“Your Lordships will not suppose that these two descriptions of offices are the same; for a *man who delights in patronage*, who wishes to indulge *kindly feelings*, *seventy small offices* are much more *convenient* (b) than *eleven large ones*. He can give away the *seventy small ones* among his friends; he can oblige (c) a colleague with one; but he cannot, he

In page 17—in these same accounts, the year in which the mass of emolument is at its *maximum*, is the year intituled April 1826 to April 1827; and in that year it stands thus

	1390	14	0
Deductions as before stated	280	0	0
	1110	14	0

N. B. The substitution of this 280*l.* to the preceding 250*l.* wears the appearance of a clerical error.

Amount of this emolument upon an average of the two years . . . 755 10 3

Whether, by this last account, my astonishment can have been lessened, the reader will judge: for, on adverting to it, the amount declared in proof of disinterestedness, turns out to be, instead of the 5 or 6 times, about 10 times as great as the real amount. At the time of this speech of his Lordship's, at the making of which the magnifying glass through which he looked at the sum, had swollen it to the 7000*l.* or 8000*l.* a-year, the average was no more than this same 755*l.* 10*s.* 3*d.* As to the 1085*l.* 11*s.* 6*d.*, which was the amount of it in the year 1831, he could not, at that time, have known anything of it, unless he had himself caused it to be taken, and had it before him in manuscript.

(a) [Two Masters]. This bears reference to another job, which seems to have been abandoned.

(b) [Convenient]. A convenient word this same word *convenient*. Where the purpose is deception, proportioned to its obscurity or ambiguity is the convenience of the diction employed in speaking of it. Pride, on this occasion,—the pride of the candidate—speaks more plainly. Where the emolument attached to the situation, bears so small a proportion to the value of the time and labour necessary to the performance of the duties of it, and at the same time affording the minimum of the provision capable of enabling a man to keep up an appearance suitable to his station in society, without affording wherewithal to support a family, in such sort that the gift of it would scarcely be regarded as a favour, it will not sell for anything; where it rises to a certain elevation, it will fetch as much as an annuity, clear of all burthen in the shape of service. Of a living the income of which is not greater than that of a curacy, the advowson will not sell for anything: while, of a living which is rich to a certain amount, the advowson has been known to sell for as much as 14 years purchase. In military offices, moreover, the like proportion has place. An Ensigny of foot, pay 5*s.* 3*d.* a-day, sells for no more than 450*l.*; while of a Lieutenant-Colonelcy, pay 17*s.* a-day, no more than about three times as much as that of the Ensign, the regulation price is 4500*l.*—ten times as much. The increment added by this circumstance to what his Lordship, with his disinterestedness, gains by the change, might be proved and expressed in figures, were it worth while. Source of these statements, information obtained from an official accountant.

(c) [Oblige.] By his Commissionerships of 1,500*l.* a-year, his Judgeships of 2,000*l.* a-year, and his Chief Judgeships of 3,000*l.* a-year, his Lordship can

“dares not, make a judge of a man who is *incompetent* (a); he dares not go himself into a court, over which he has placed an unfit person.

“At present, the persons who are made Judges are not made by favour; they are not obliged by the choice, and God forbid that they should hold their office by any other title.

“Thus, by this arrangement, seventy places are lopped off from the patronage of one of the Ministers of the Crown. Great diminution will also take place in other departments of the Court, in addition to those which I have named; but, wishing to understate the advantages of the plan, rather than indulge in any exaggeration, I omit them for the present. By my propositions, delay will be abridged, decisions improved in quality, and their despatch promoted, and expense will be considerably lessened, going even upon the bare supposition that nothing finds its way into the pockets of suitors, except the saving resulting from the abolition of fees.”

22 Feb. 1831, *Mirror*, p. 418.—“It is quite clear that these parties, who are compelled to contribute the heavy expenses which arise out of Chancery suits, are the last persons whose interests, as connected with the pecuniary cost of legal proceeding, has been yet consulted. The total saving in one branch of the bankrupt department will be 6000*l.* a-year; the expenditure in the office of *Secretary of Bankrupts* being reduced from 9000*l.* to 3000*l.*, and the whole reduction in all departments connected with bankrupt affairs, after due provision for the new Court, amounts to 26,000*l.* (b) a-year net saving of fees to suitors.”

22 Feb. 1831, *Mirror*, p. 419.—“But it may be said—Oh! you are taking great pains to reform the expenditure of this Court, but you are taking excellent care to keep the Chancellorship to yourself, for nobody competent to fill the office will take it, with the reductions you have made in it.

“Very well; but, is it to be supposed that I should have consented to give up the money arising from my professional exertions, and consent to support the burthen of the peerage, if I was not to take some fair chance of compensation? My Lords, I could not afford to do it.....

“Permit me, however, to add, my Lords, first and last, once and for all, that if I suggested any increase of the emoluments of the Great Seal, I would rather add to the retiring pension (c) of the Lord Chancellor, than I would augment his working salary.”

“oblige” persons so high in rank, influence, and capacity of *obliging* him, that they would not have accepted of any of the abolished Commissionerships, with their three or four hundred a-year.

(a) [Incompetent.] Howsoever, in this respect, the case may be with a hypothetical Lord Chancellor, in regard to an actual one, if in what I have heard from various quarters there be anything in any degree well grounded, the case is in no inconsiderable degree different. Of the four Judges, against one in particular the outcry, on the score of inaptitude, is, if I am not egregiously misinformed, loud and extensive.

(b) [26,000*l.*] As to this sum, evidence other than as above, none: and of the new fees established, unbounded and ever increasable as is the amount of them, nothing said. For the real amount, see below.

(c) [Retiring pension.] The more rapidly the Lord High Jobber drives on his course with his learned Job-horses, the nearer will be the thus contemplated fall of this modern Phaeton upon his bed of down—the retiring pension,—and the greater the importance of any addition made to it.

When the service of fighting and subduing their Opposition Lordships has been accomplished, the unpopularity which, by that time, will have thickened round him, will have impressed his colleagues in the Cabinet with the necessity of

14 Oct. 1831, *Mirror*, p. 3053.—“ The Lord Chancellor I cannot help observing, that I have heard with really great concern, that some *imputations*—I will not say imputations, for I hope I may consider myself above imputations,—but that some *cavils* (*a*) have been raised, *out of the House* with respect to my *motives* in bringing forward this Bill; and I regret the more sincerely that such *cavils* should have been raised, because they have been entertained by persons for whom I am bound to pay every respect, and particularly by *one* person—a gentleman of great learning, a personal friend of mine, a man of extraordinary learning; the father of the English Bar, and the father of Law Reform.

“ And he says, that the *anxiety* which I have evinced (and which I still feel) to pass this important measure, looks as if I were snatching at a patronage of 26,000*l.* a-year, besides the patronage of the Great Seal.

“ But this apprehension of my excellent friend arises, I must say, from a *total ignorance of my nature*, and I will add, too, of the *provisions of this Bill* (*b*). *I have only substituted for a patronage of 35,000*l.* a-year, one of 18,000*l.* (*c*); in addition to this, I have surrendered the patronage of two sinecure places of 12,000*l.* or 14,000*l.* (*d*) per annum; so that by the operation of this Bill, there is a great diminution of the patronage and advantages now belonging to the Keeper of the Great Seal.”*

giving him his quietus, and consigning him to his thus anticipated retirement. The sense entertained of the retardation opposed to parliamentary reform by the job here in question, can scarcely have failed to hold up to the view of the public, in the proper colours, the expediency of such a measure.

(*a*) [Cavils.] By *cavils* seems to be commonly understood ungrounded and groundless censure. How far it is in the present case applicable, the reader will already have been in some measure enabled to judge.

(*b*) [Ignorance of this Bill.] If, for the provisions of this Bill anything like an apology be to be found, the reader will judge whether an ignorance of the substance, qualities, and probable effects of it on the part of all concerned in the drawing of it, but more especially of the noble and learned draughtsman at the head of them, will not constitute the least bad apology that can be found for it. Another point on which the reader is hereby requested to pronounce judgment, is—whether to the removal of that same ignorance, some contribution has not been made by him, to whom this “total ignorance” is thus imputed.

In this same request may also be included the article of “*motives*.” By a man who is not in the habit of looking into his own mind, the motives from which his conduct derives its direction are frequently not so correctly or comprehensively understood as by bystanders. In these Observations, if his Lordship will be pleased to continue his researches in this view, he may, perhaps, find a sort of microscope by which that operation will be more or less facilitated.

(*c*) [35,000*l.*—18,000*l.*] Whether in these figures there be not some considerable errors of the press or of the pen, is another point on which the reader will presently be in a condition to pass judgment.

(*d*) [12,000*l.*—14,000*l.*] Magnificent indeed is the show made by these figures. But this large cob-nut has been cracked, and the kernel has been found wanting. I could not but suspect as much; and, by a publication which has made its appearance while these pages were writing, this suspicion has been pretty well confirmed*:—From which the true value appears to be = 0: to which, perhaps, may be substituted *x*; if *x* be taken for a very small number.

As to the above acknowledgments, the candour and good feeling displayed by them is such as would be matter of astonishment from any person but the best good-tempered and good humoured man that was ever seen in that high office, not to speak of any other: but, in imitation has been already given that somehow or other so it happens, in such sort is my stomach constituted, that not even in this

* *Legal Observer*, Oct. 22, 1831, p. 386.

Now again for a battle—a second battle—between the principle of *single-seatedness* and that of *many-seatedness*. Scene of action, the *Commissioners' Court*. Problem to be solved—in what cases, or say on the occasion of what *sorts of business*, is employment by this Bill given to Commissioners acting singly, in what other cases or on the occasion of what other sorts of business is employment given to Commissioners in numbers greater than one,—that is to say, two to six inclusive. Sections on this occasion to be looked to, in the First Edition § 6, 7: so likewise in the Second Edition, in which they are the same, word for word.

1. Look at § 6. “The said six Commissioners (it says) may be formed “into two Subdivision Courts, consisting of three Commissioners for each “Court:” after that it says, “and all references *or* adjournments (meaning “probably *and* adjournments) by a *single* Commissioner to a Subdivision “Court, by virtue of this Act, shall be to the Subdivision Court to which “he belongs, unless,” &c.

Here, if only by implication, at any rate beyond doubt, we have a single-seated Court authorized.

2. Look now at § 7. “In every Bankruptcy prosecuted in the said “Court of Bankruptcy, it shall...be lawful (it says) for any *one* or more of “the said six Commissioners” to do so and so: “Provided always, that “no *single* Commissioner shall have power to commit,” &c., “otherwise “than,” &c.

Here, then, we see authorized single-seatedness, double-seatedness, treble-seatedness, quadruple-seatedness, quintuple-seatedness, and sextuple-seatedness: six different Courts for the more effectual exclusion of “uncertainty,” as promised in the Preamble.

3. Look now at § 13. “Every Fiat prosecuted in the said Court of “Bankruptcy shall be filed (it says) and entered of Record in the said “Court, and shall thenceforth be a Record of the said Court; and it shall “thereupon be lawful for *any one or more of the Commissioners* thereof,— “(namely, of the Court of Bankruptcy, in which are these six Commis- “sioners, it seems, as well as the four Judges) to proceed thereon in all “respects as Commissioners acting in the execution of a Commission of “Bankrupt, save and except as such proceeding may be altered by virtue “of this Act (a).”

shape of such trebly refined sugar, can anything in which the taste of a bribe is perceptible be swallowed by it.

(a) [This Act.] Yes: according to this Act, at one and the same time, in relation to one and the same supposed act of bankruptcy, in two different Justice-chambers, by two different sets of Judges, the one subordinate to the other, one and the same set of proceedings is thus to be carried on; and these same proceedings are (it seems) to be *filed* &c. in the office belonging to one of those same sets of Judges—namely, the four Judges of the Court of Bankruptcy—in that office alone; and thereupon “any one or more of the Commissioners *thereof*,” namely, of the said Court of Bankruptcy, of and in which, in one sense of the words *Court of Bankruptcy*, there are four Judges and no one Commissioner; in another sense of those same words, there are also at the same time Commissioners in any number not exceeding six, as also in the several numbers two, three, four, five and six, who are “to proceed thereon” (says the Bill and the Act) and so forth as above.

Could any exercise be better imagined for the purpose of being translated into Latin verse for the instruction of Westminster School boys in the art of Poetry, as above proposed?

This, however, is an episode. Be this as it may, here again we have (it is true) many-seatedness in all its five forms: the said Commissioners, whatsoever be the number of them, sitting in the laps of the four Judges; of the said four Judges,

4. Look to § 20. "It shall be lawful" (says the Bill) "for *any* Commissioner who shall make any adjudication of Bankruptcy, to appoint two or more meetings instead of the three meetings directed by the said recited Act (*a*), for the Bankrupt to surrender and conform, the last of which said meetings shall be in the forty-second day limited by the said Act for his surrender (*b*).

5. Look to § 21. "In all cases" (says the Bill) "in which power is by this Act given to *any one* of the said Commissioners to act, such power may . . . be exercised by the said Chief Judge, or by any one of the said other Judges; and where any such Judge so acting would, in case he were a Commissioner (*c*), make any reference or adjournment to a Sub-division Court, such reference or adjournment shall be made by such Judge to the Court of Review, instead of to a Sub-division Court."

Here again may be seen single-seatedness; single-seatedness mentioned, many-seatedness, not.

6. Look to § 22. Place and words the same in both editions. Subject-matter, Official Assignees. Here again may be seen, it is true, *many-seatedness* in all its nine degrees; but not the less true is it that so also may be seen *single-seatedness*. "The proceeds in question" (the Bill says) "shall . . . be possessed and received" (possessed before they are received) "by such Official Assignee alone, save where it shall be otherwise directed by the said Court of Bankruptcy or any Judge or Commissioner thereof (*d*)."

the three Puisnes saying they are "*of the same opinion*" with the Chief, and all four singing to the Commissioner or Commissioners "lullaby baby."

(*a*) Note that in neither edition of this Bill is there any such or any other Act recited.

(*b*) In the second edition also this same section stands twentieth, and is, without variation, in the same words. Here then we have a Commissioner acting under the direction of an Act which has no existence: much good may it do him; not to speak of the suitors. Here, and without doubt, we have single-seatedness: Yes—and *here* in all its simplicity and purity.

(*c*) Question here for argument; Judge either the Judge whose proceedings in the imagined case are to be guessed at, or some other and what Judge or Judges; question, what the said Judge would do were he a Commissioner? Not that, in this imagined case, there is anything of inconsistency or impossibility: for, though, as above, every Commissioner is a Judge, it is not true that every Judge is a Commissioner.

Be this as it may, here we have a most ample recognition of the principle of single-seatedness. Not only six Justice-chambers do we see with a *Commissioner* in each, but *four* other Justice-chambers with a *Judge* in each.

(*d*) Now suppose a different direction given by each of any two, or by every one of all these *ten* members of the Court of Bankruptcy—namely, the four Judges who are not Commissioners, and the six Commissioners who are, and are not Judges. What is to be the consequence? The unhappy wight—the Official Assignee,—should he be, as he may be, pulled at the same time ten different ways, what is to become of him? Still greater would be his embarrassment than that of *Garrick* between *Tragedy* and *Comedy*, or *Hercules* in the print between *Venus* and *Minerva*: more nearly resembling would his condition be to that of a French traitor under the *ancien régime*, when pulled four opposite ways by so many wild horses.

After this, in this same section, comes a clause speaking of such rule and regulation . . . as the Lord Chancellor, or the said Court of Review, or any Judge of the said Court of Bankruptcy, if authorized so to do by any general order of the same Court shall direct." As to this same *if*, is it to both the subject-matters immediately preceding—namely, the Court of Review, or any Judge of the said Court of Bankruptcy,—or to the last of them alone, that it is to be understood to bear reference? Here likewise we have a recited Act, a said recited Act, which is not

7. Look at § 30. "Any *one* of the Six Commissioners may (says the "Bill) *adjourn* the examinations of any Bankrupt or other person, to be "taken either before a Subdivision Court or the Court of Review, or, if "need be, *before both Courts in succession*.....and may likewise *ad-* "journ the examination of a proof of debt, to be heard before a Subdivi- "sion Court; which said Court shall proceed with such last-mentioned ex- "amination(*a*)."

After that, in this same section, comes a Proviso, "that in case, before "the said Commissioner or Subdivision Court, both parties.....consent "to have the validity of any debt in dispute tried by a Jury" (which, by the

anywhere recited: so much the better for the Official Assignee, who, if it were recited, might have to be charged with *interest*, with which, as the matter stands, he cannot be charged: and which, accordingly, the fault will be his if he does not pocket.

Note, moreover, that on this occasion the words are not, as elsewhere, *rules* and *regulations* in the plural, but rule and regulation in the singular; and thus it stands, not only in the First Edition, but in the Second also; and that, after revision made. Now then, as to this one *Rule* and *Regulation*. Suppose it made by a single Judge of the Court of Review, what Rule and Regulation is there, power for the making of which is left either to the Court of Review in its *integrality* (*integrality*, not *integrity*), or the Lord Chancellor? And suppose that, by *every one*, or even any one of these functionaries, the one Rule and Regulation thus authorized has been made, what power is there left for the eventual amendment of it? for the amendment of it, whether in the way of subtraction, addition, or substitution? By the first exercise given to it, will not this same power be exhausted?

Moreover, as to these *Rules* and *Regulations*, when they are in the plural, what is to be done with them? According to § 1, they are to be "*established*;" according to § 11, they are to be *made*; according to § 22, Rules are to be *made* (doing as well as they can without either *Regulations* or *Orders*); according to § 34, "*Rules and Orders* are to be *made* and *directed*;" and thus it stands in both Editions; *they* are to be made, that is to say, in this Section "*Rules and Orders*," by which (it seems but fair to presume) is meant the same thing with what (as above) is, in other places, meant by "*Rules and Regulations*."

Whatever thing it is you mean, how many times soever in the same portion of discourse you have occasion to mention it, be sure never to employ the same locution in the designation of it.—A rule to this effect, though the observance of it has never yet been made obligatory by the positive enactment of a law of *Parliament*, has, of late days, been made little less effectually obligatory by a law of *Fashion*. In a speech spoken, or a paragraph in a periodical, it serves not any more important purpose than that of ornament. But, when conformed to in and by an Act of Parliament, it is of more substantial use; for, whatsoever be the number of times at which this decoration is employed, the same is the number of grounds on each of which a lawsuit may be erected, and appropriate remuneration for learned industry and ingenuity administered.

As to rules, regulations, and directions, rules and regulations are in use to be *made*, as also to be *established*; nor are they altogether unaccustomed to *direct*, and in this way to be *active*; but as to the being *directed*, and accordingly passive, *facts* (says the common aphorism) are *stubborn* things; and it seems questionable whether the like stubbornness may not be apprehended at the hands of *Rules* and *Regulations*.

(a) Here again the already-mentioned difficulty re-exhibits itself: this same operation, whatsoever it be, any *one* of these five Commissioners (all of them at the same time members of the Court of Bankruptcy) may perform,—whatever may be done by the two, three, four, or five others to prevent it. As to *adjournment*: by *adjourn* the learned draughtman means (it may be presumed) *transfer*: the occasion on which *adjourn* is the term commonly employed, is when, the body being the same, the transference is of that same body to a meeting at another *time*, and at the same *place* or another *place*. But, for aught I know, precedents of employment given in this sense to the verb *to adjourn*, may have met the learned draughtsman's eye.

bye, they will not do, unless they are egregiously misadvised), "an Issue shall be prepared, under the direction of the said Commissioner or Subdivision Court, and sent for trial before the Chief Judge or one or more of the other Judges; and if one party only applies for such Issue, the said Commissioner or Subdivision Court shall decide whether or not such trial shall be had, subject to an Appeal as to such decision to the Court of Review(a)."

Before this fruitful section is dismissed, another rather singular provision in it must not be left unnoticed. Not content with authorizing and requiring the Judge or Judges in question to "*adjourn*," or say transfer, the matter in question to a Judicatory, at his or their discretion; it authorizes and requires them respectively to do this favour to two Judicatories in *succession*, one after another; thus producing the effect of an *Appeal*, whether the parties, or any one of them, is desirous of it or no; in other words, although it be against the desires of all parties interested: "any one of the said Six Commissioners (says the Bill as we have seen) may adjourn the examination of any Bankrupt or other person, to be taken either before a Subdivision Court or the Court of Review, or if need be *before both Courts in succession*, and may likewise adjourn the examination of a proof of debt to be heard before a Subdivision Court(b)."

(a) Thus far the Bill: so that, *inter alia*, should the question, such as it is, be decided upon, in the first instance, by the said three other Judges, the Appeal against such decision of these *same other* Judges may be heard by these same other Judges, sitting under the name of *the Court of Review*. The Appeal will be from themselves to themselves, and will accordingly be heard by themselves.

In the law of Procedure, in this provision, a new improvement, à la Brougham, is exhibited. An Appeal from the Lord Chancellor to the House of Lords has long been understood to be (accident excepted) an Appeal from his Noble and Learned Lordship in one place, to his said Noble and Learned Lordship in another place; but, how effectually soever *produced*, this mode of obviating *uncertainty*, though not without some relatively beneficial addition to *expence* and *delay*, has (it is believed) been authorized and established by Act of Parliament. It may accordingly be considered as an addition made to the list of the improvements, made or meditated by the Noble and Learned Author of this Bill, in the fabric of the law.

(b) Thus far the Bill: a curious enough document would be the *formula* by which this Appeal, without the name of an Appeal—this Appeal *in disguise*—this *Quasi-appeal*, as it may be termed,—is ordered to be made; its place would be among the Rules and Regulations, or say Rules and Orders, so often spoken of.

Thus it is—that here again we have *single-seatedness*; and of the six Commissioners, each one is, if he think fit so to do, issuing a different decree; making, on one and the same occasion, on one and the same point, in any number as far as six, different decrees, each of them contradictory to every other; on the supposition that, to this Act, and to this clause in it, the execution called for by it is given accordingly: so that, should the money, say 50*l.* be by Commissioner A adjudged to Thomas Noakes, by Commissioner B to John Stiles, by Commissioner C to John Doe, by Commissioner D to Richard Roe, and so forth, then and in such case the said Noakes, Stiles, Doe, and Roe, &c. will receive, each of them, the said sum of 50*l.* to his own proper use.

To the quantity of the mass of *argumentation* capable of being extracted from this one Section—to the quantity of *time* the said argumentation may be made to occupy—to the quantity of *money* it may be made to pump up out of the fund lodged in the hands of the Assignees, official and non-official—to the *profit* capable of being extracted out of the said money, in the shape of remuneration for the services of learned Judges, learned Commissioners, and learned Gentlemen,—who shall assign any limits, other than those of the said fund itself?—all for the more effectual minimization of *expence*, *delay*, and *uncertainty*, in fulfilment of the *promise* made in the preamble.

8. Look to § 31. "If *such Commissioner*(a) or Subdivision Court (says the Bill) shall determine any point of law or matter of equity, or decide on the refusal or admittance of evidence in the case of any disputed debt, such matter may be brought under review of the Court of Review by the party who thinks himself aggrieved, and the proof of the debt shall be suspended until such Appeal shall be disposed of, and a sum not exceeding any expected dividend or dividends on the debt in dispute in such proof may be set apart in the hands of the said Accountant-General, until such decision be made; and in like manner there may be an Appeal on the like matter of law or equity from the Court of Review to the Lord Chancellor(b)."

9. Look lastly to § 32. In and by this Section, the crown may be seen put upon the aptitude of *single-seatedness*; and not absolutely and merely is its aptitude recognized, but also the comparative superiority of its aptitude, in comparison of *triple-seatedness* and *quadruple-seatedness*. Look on till you come to the words "*one Commissioner*," and then observe the feats which his Commissionership is rendered capable of performing (c).

Note, moreover, that, by the words of this clause, when the learned persons in question, be they who they may, adjourn the examination of any Bankrupt or other person, he or they are to proceed—not with *that same* examination, but with the examination of a different matter; namely, *a proof of debt*. Such is the mode of proceeding, for the carrying on of which the learned draughtsman has made provision, and with an anxiety the tokens of which are upon the face of the passage so conspicuous.

(a) Here again may be seen *single-seatedness*: witness "*such Commissioner*."

(b) Note how in this Section (which follows immediately upon the last-mentioned one), lest the quantity of this pre-eminently necessary remuneration should not yet be sufficient, provision is made for *two Appeals*: two Appeals, one above another,—Ossa upon Pelion; namely, one from any or all of the six Judicatories just indicated, Appeal to the *Court of Review*; the other from the Court of Review to the *Lord Chancellor*; but, rich indeed must be the fund, if, after having been drawn upon by these drains which we have been seeing, there remain any very considerable pickings for his said Lordship, and his immediate subordinates in his Court of Chancery.

(c) Appeals may, moreover, here be seen mounted one upon another in a pile, by which the tower of *Babel* will naturally be made to present itself to the mind of any person who has ever seen the elevation of it upon a Dutch tile.

"If the Court of Review" (says the Bill) "shall determine in any Appeal touching any decision in matter of law upon the whole merits of any proof of debt, then the order of the said Court shall finally determine the question as to the said proof." Having gone thus far, a Debtor or Creditor by whom the Bill were perusing would naturally expect and hope to find the course of plunderage at an end. Vain, alas, the expectation! for now comes in the pile of *Appeals*, introduced by an *unless*; "*unless*" (continues the Bill) "*unless an Appeal to the Lord Chancellor be lodged within one month from such determination*:" this month being interposed for the more effectual fulfilment of the promised minimization of delay and uncertainty. But, alas once more! this is but the beginning of sorrows: for, "*and in case of such Appeal*," (continues the Bill) "*the determination of the Lord Chancellor thereupon shall in like manner be final touching such proof*;" but if the Appeal either to the Court of Review or the Lord Chancellor shall relate only to the admission or refusal of evidence, then and in that case the proof of the debt shall be again heard by the *Commissioners* or Sub-division Court, and the said evidence shall be then admitted or rejected according to the determination of the Court of Review or the Lord Chancellor." Here the Section ends.

Here, then, in the character of a security, an additional security, against misdecision, is assumed the propriety of an appeal from the Lord Chancellor; yea, even from the Lord Chancellor to a Commission; to *any one* of the six Commissioners, at the choice and pleasure of the party, or of *chance*, as it may happen.

10. Look to §40. No—the last preceding was *not*—this *is*—the concluding article:—the article by which a close is put to the list of the proofs given of the virtual recognition which, by the Noble and Learned advocate of *many-seatedness*, has thus been virtually made of the aptitude—not to say the superior aptitude—of *single-seatedness*. After what has just been seen, this progress (it must be acknowledged) is but an anticlimax: but the list—the whole list—having been undertaken to be given, will naturally have been expected to be seen, and without production of disappointment could not be left uncompleted.

This section has for its subject-matter the case, where a Bankruptcy, being by the Act found lying under the cognizance of the existing Commissioners, is transferred to that of the five new Courts now instituted. To the six Commissioners, each of them singly-seated, are, (it will be seen) in and by this Section, given the two powers following: 1. power the first, “power to appoint” (says the Bill) “some one of the aforesaid Official As-

But, if expense, delay, and uncertainty, be put out of consideration, (and more completely put out of consideration they can scarcely be than they are in and by the whole tenor of this Bill), security (it must be admitted) can never be too secure. Here, then, is this same scale or pile of Appeals, at the pleasure of any *one* of the parties (and, in particular, of any one of them whose plan it was to gain his point by exhausting the matter of fees from the pockets of the rest) reproduced; and *this*, not once only, but, *toties quoties*, till the exhaustion is completed; and thus may the original *repetend* be improved into a *circulate*, and, for the benefit of the learned, useful application thus made of mathematics to jurisprudence: and the tower of Babel, turned, *toties quoties*, topsy-turvy, and then set right again, as in the case of an *hour-glass* with sand in it—an hour-glass, that formerly useful implement, so much prized by the wisdom of our ancestors, now so extensively supplanted by clocks and watches.

With incontestable propriety may these same *Appeals in disguise*, alias *Quasi-appeals*, be thus put upon a level with *Appeals* commonly so called. Why so? For this plain reason—because, in point of expence and delay, no difference is there between the one case and the other; and so long as the quantity of *money* taken out of the pockets of suitors is the same, and the quantity of *time* wasted is the same, what matters it what the name is which is given to the legal *operation* or *instrument* by which the evil is produced? the effect being the same, what matters it what the name is which is given to the cause?

Now then for the *scale*, or say *pile*, of Appeals—these same appeals so called, and appeals not so called, put together. For shortness, let the name of Appeal be given to each one of them.

1. Appeal the first we have had already; namely, by Section 31—Appeal from “such Commissioner or Subdivision Court” to “the Court of Review.”

2. Appeal the second (by Section 31 and 32)—from the Court of Review to the Lord Chancellor.

3. Appeal the third (an appeal in disguise)—Appeal from the Lord Chancellor to the Commissioner (the *single seated* Commissioner) or Subdivision Court, by whom or which “the proof of the debt” (says the Bill) shall be *again* heard.

4. Appeal the fourth (another disguised appeal)—Appeal from the Commissioner or the Court of Review to that same Court of Review. Appeal, *ab eodem ad eundem*, as above noticed.

5. Appeal the fifth (another disguised appeal, disguised under the same cloak as Appeal the fourth)—from the Court of Review to the Lord Chancellor.

6 As yet we have but five appeals *declared*, or say appeals *patent*; but a sixth disguised appeal, or say an Appeal *latent*, if not a *seventh*, may be discovered in the words “*Commissioner or Subdivision Court* ;” for, in a former section, namely the sixth, may be seen established an appeal from every single-seated Commissioner to a Subdivision Court; and, in another, namely section the third, from every Subdivision Court to the Court of Review, from whence, as above, lies the Appeal to the Lord Chancellor.

“signees to act with the existing Assignees;” 2. power the second, “power to direct” (says the Bill) “the existing Assignees to pay and deliver over to such Official Assignees” (in the plural) “all monies, &c.” Thus far the Bill. But *direction* is one thing, *compliance* is another thing; and suppose that in consequence of such direction compliance has not place; what then is to be the result? *Answer*: exactly that which for the remuneration of learned labour is to be desired. *Motion* will have to be made, in the appropriate Court, say the *single-seated* Commissioner’s Court,—motion, to *shew cause* why the said monies, &c. are not so paid and delivered over: which motion, being there decided upon, may or may not be carried upwards, or upwards and downwards, into the scale or pile of *Appeals* above delineated; and thus it is, that to that pile which can never be too high—namely, the pile of remuneration for the services and merits of Noble and Learned Lords and Gentlemen—a correspondent addition will be made.

As it is with Hogarth’s prints, so have I found it with this if not inimitable, let us hope never-about-to-be-imitated Bill; look as often as you will, look again, new interesting objects will you find in it: till this day, (October the 19th) not more than five judicatories had I observed to have been established by the Bill, in lieu of the two which it found in existence. On looking into a Section which had escaped me,—namely, Section 5,—I find by it another Judicatory added; namely, that of a Master in Chancery. Yes: that of a Master in Chancery; and so far so good. But, does the matter end there?—Oh, no: for, from the decision of his Mastership lies of course a virtual appeal,—under the name of *exceptions* to his Report,—either immediately or through the medium of the Vice-Chancellor, to the Lord High Chancellor in his quality of Supreme Judge (save and except the House of Lords) in matters of Equity; so that thus we have not one only but three more stages of Appeal. “All costs of suit (says § 5) between party and party in the said Court of Review shall be at the discretion of the Court, and shall be taxed by one of the Masters of the Court of Chancery.” All costs of suit? and to the sum of these sweet things, what limit is there that can be assigned? By the blessing of God upon learned industry, to thousands of pounds in any number may these same costs be made to amount: and out of the stakes constituted by the bankrupt’s assets, and played for, as a pool of fish at *Pope Joan*, by noble and learned Lords and Gentlemen—out of this fund and no other shall these costs be taken? *Semble que non*: and if not, then by the creditors in lieu of the so much in the pound to be *received*, comes so much to be *paid*.

So much as to everything that has any immediate application to the particular matter here in question; that is to say, to the merits and demerits of the Bill, now passed into an Act. But, in the course of this inquiry, has unavoidably been started another question—no less than whether, under the present head of the law, as between *melioration* and *deterioration* of the whole mass taken together, deterioration is not of these two opposite results unhappily the most probable. Now, then, important as is the principal question, still more so (as everybody sees)—incalculably more so—is this collateral one. To him, so long as he continues in that highest of all high law situations—to him belongs, so far at least as concerns *prevention*, the attribute of omnipotence. Without his concurrence—or at least permission—for no melioration, to any considerable extent, can be seen any chance: for no melioration worth mentioning, much less for an all-comprehensive one.

Of any beneficial effect, the production, so far as it depends upon him, depends upon the conjunct existence of two states of mind—*inclination* and *ability*: and, if inclination be absent, *ability*—all the ability imaginable—will be of no use. If it be by an interest opposite to that of the community that his conduct is guided, inclination will be—not on *that*, but on the opposite, side. Disinterestedness, as the word is commonly understood, is the quality, not of him whose conduct is not determined by any interest (for that would be a mariner whose vessel never sails but in a calm), but of him, who, on the occasion in question, is *not* under the guidance of any interest opposite to that of the community at large: to the possession of this quality he has been, and will be seen to be, laying claim: as the old law phrase is, *continual claim*. Into the validity of this claim, the inquiry now continues itself. By himself—by any one for him—will this contestation be complained of? He has himself to thank for it. By him has the gauntlet been thrown down: by this inquiry it is not thrown down, but taken up.

So much for inclination. What, now, if the other requisite—ability—be wanting likewise? As to this, some judgment the reader is prepared to form already; meaning, always, *appropriate* ability: for, as to oratorical talent, supposing *inclination* opposite, so far from being the better, law reform would be all the worse for it.

To return to *inclination*. Of what, in the shape of patronage, his Lordship has given up, and, *per contra*, of what he has gained, mention has not, in any other than general terms, been thus far seen made. Now for particulars.

In the customary order, *profit* comes before *loss*: but, in the present case, the most suitable order is—loss before profit.

Here follows the account.

PATRONAGE GIVEN UP, AS FOLLOWS (a):—

1. Commissionerships, 70.

2. Average annual emolument of each . . . £380 0 0

3. Average number of vacancies every year (b) . . . 4

4. Hence average value of the whole number of the incomes, the right of appointment to, or say, in one word, the patronage of which is given up,—that is to say, the value in the hands of a man who has it in perpetuity . . . £1,520 0 0

5. Average number of years' continuance of the same man in the Chancellorship, 8 (c).

6. Years' purchase, which an annuity for eight years is worth, between 6 and 7; for round numbers and ready calculation, say (d) . . . 7

Six and a half would be more correct; but, the thus assumed number 7, being the same on both sides, the difference will not be material.

7. Hence, total value of the patronage given up . . . £10,640 0 0

—this being the average value of the four salaries, namely, the above 1,520*l.*, multiplied by the number of years during which, according to the above-mentioned calculation, the right of appointment may be expected to remain in the same hands.

(a) On the per contra side, in the correspondent parts, the *words* are, as far as may be, the same, the *figures* alone different: of this identity, the use and consequence are—that, to the purpose here in question, any error that may happen to be found may be seen to be the less material.

(b) As per report from individuals by whom observation has been made of the vacancies which occur from all causes whatsoever—from vacancies occasioned by changes and promotions as well as by mortality. By *Tables of Mortality* it would not, as I have been told, be so much as 2: cause of the difference, in the

PER CONTRA . . . PATRONAGE GAINED,
AS UNDER:—

1. New functionaries, 23.	
2. Aggregate of their salaries (e) . .	£26,400 0 0
3. Average number of vacancies every year : being as the number of new functionaries (23), to that of the former functionaries (70), say, for round numbers 69 : that number being 4 (b), this will be one-third of 4, namely, $1\frac{1}{3}$.	
4. Hence, average amount of the salaries placed every year at the disposal of the Chancellor, by the vacancies of that year	£1530 0 0
which sum, to give the total value of his patronage, over and above that of the appointments already made, will be to be multiplied by 7, as below.	
5. Average number of years' continuance of the same man in the Chancellorship, as per contra, say 8 (c).	
6. Years' purchase which an annuity for eight years is worth, as per contra (d) . .	7
7. Hence, total present value of patronage exercisable in future .	£10,710 0 0
Hence, total value of the patronage gained . .	£37,110 0 0
Patronage given up . .	£10,640 0 0
Net profit, after deduction of the patronage given up . .	£26,470 0 0

Thus is the value of the patronage gained, more than three times that of the patronage given up.

instance of the functionaries in question, vacancies produced by changes and promotions.

(c) Taken from the list of *Keepers of the Great Seal*, as per Beaton's Political Index.

(d) By report of an official accountant, consulted for this purpose, about $6\frac{1}{2}$.

(e) [26,400*l.*]—In a tract, intituled "The Bankrupt Act, with Introduction, Notes, and Index—By a Barrister," p. 23, the sum at which the total is set down is 24,000*l.*, and no more : a slip, surely, either of the pen or the press.

So much for calculations and results : now for objections to them. "Vast" (says somebody)—"Vast (it must be confessed) are these sums : vast, accordingly, would be the value of the patronage in question—the patronage gained by the noble and learned author of the measure,—supposing this same sum actually received by him. But, for the supposition of any receipt at all,—at any rate, of any receipt approaching to the like of any such amount, what ground will you find? Yes : if he had children and grand-children, all of whom he had to make provision for, and would have made provision for out of his own means, had it not been for this resource. But, for any such supposition, is there so much as the shadow of a ground?"

Not much (answer I) : not much—I must confess. But neither by this confession is confessed the impropriety of placing the sum in question to the account of *profit gained*.

In the first place—the question of chief practical importance, though it is but a collateral one, being, as above shown, the one relative to *disinterestedness* ; and this question turning—not upon *absolute*, but upon *comparative*, values, namely, as between matter given up, and matter of the same sort gained,—the consequence is, that if the subject-matter in question were mere moonshine, it would not the less be entitled to a place in this account.

In the next place, this is one of the occasions to which the old saying about *meal and malt* applies : if he has it not in meal, he has it in malt : if he has it not in money, he has it in money's worth.

Reader, before you lie now the two sides of the evidence : which side (ask yourself) preponderates? his Lordship's? His Lordship's, cry aloud in chorus the vast majority of those whose eyes either *gratitude* or *hope*, more especially the stronger power, keeps fixt upon the contents of the rich box of *bon-bons* which his Lordship has the distribution of : those members of the fourth estate not excepted, whose high lot (it has been said) it is to behold a frequent knife and fork lying before them at the noble and learned table : accordingly, to no person so beatified, is the question addressed. And, but for such patronage, from whom would this incense—all or any of it—be received?

For topics for this same incense, from which in this way the value of his Lordship's patronage receives increase, can there be any demand still remaining? No, surely : but, for argument sake, suppose there were, a source from which it might receive completion, and *that* in a manner the most satisfactory, is a verse that may be seen, I do not remember in what page, of the *Gradus ad Parnassum*, the assistant so well known to all manufacturers of the so highly valuable commodity called a Latin hexameter verse. It consists of a verse by which any man to whom it happens to have a fancy for taking an airing in Greece at the top of Mount Parnassus, may with all facility, and as quickly as he could say Jack Robinson, as the saying is, give himself that gratification. It consists of eight words, which, when thus put together, constitute a panegyric on the blessed virgin, and have the curious property of composing an entire poem, of which any man who is curious enough, may make himself the author : the property to which it is indebted for this magic power is this : the words are so selected, that in every order which they are capable of being made to assume, this sort of verse is composed of them. The verse is this :—*"Tot tibi sunt virgo dotes quot sidera cælo :"* it is thus, by an arithmetical process, that so curious an effect is produced—ringing the changes upon these eight words. The following is a sample of the topics on which that same incense grounds itself :—

His admirable proficiency and exquisite skill in the art of disseminating

"*useful knowledge*" (a)—the sound discernment and sound judgment displayed by him in the choice of subject-matters and operators—his skill in the creation of universities—that skill, of which *Londinia* (b) has already had, and her *Alma Soror Regia* is about to have, the benefit—his complete mastery of the theory and practice of legislation as it ought to be, as exemplified and demonstrated in and by his Local Courts' Bill, and this his Bankruptcy Court Bill, now so happily and triumphantly erected into an Act.

No great chance is there (I must confess)—no great chance is there, of any Honourable Brougham,—who, smelling at the same nosegay with the Lord Erskine, may with him, in an *unlearned* state, feed with *thanksgiving* on about five thousand a-year, and, with *hope*, on about as much more—exonerating his noble and learned father of the whole of this expense.

Profit, in *this* shape, it is true, he has not: but various *other* shapes there are in which he has it—shapes, having each of them its beauty; and in variety there is pleasure.

Calculate, who can, the correspondent additional number of those, whom, like the members of one of James the First's Parliaments, the additional patronage will throw "upon the knees of their hearts" (for in those days hearts had knees): calculate this, and when your calculation is made, ask yourself what, when the means of sustenance are provided, what is it that money is good for, but to cause men to do the will of him who has it in his pocket? and, in a word, look the world all over and say by how much is the appetite more canine for mammon in the shape of *money*, than for mammon in the shape of *power* in general, and in particular in the shape of *patronage*?

February 22, 1831, *Mirror*, p. 420.—"The only motive by which I am actuated, is the anxious and earnest wish to purify and amend the defects in the institutions of my country."

Such is his Lordship's "only motive." Nothing cares he about *fees*: nothing cares he about *salary*: nothing cares he about *patronage*: nothing cares he about *emolument*, in any imaginable shape: by any one, or all together, of the objects by the love of which the conduct of ordinary men is to such a degree hard driven, not a jog is capable of being given to his immovable mind.

So much for the *shadow*; now for the substance: so much for *make-believe* disinterestedness. Reader, have you any curiosity to see a sample of what, in relation to these same arrangements, real disinterestedness in conjunction with appropriate intellectual aptitude would have produced? If yes, take the trouble to read what follows:—

1. As to the *number* of the functionaries of all sorts; this number, not greater than that which has been found necessary: and to find what is the number necessary, proceed in manner elsewhere recommended. Proceed upon the *deputation system*, as above explained. Begin with the minimum number; add other functionaries, one by one, as the need receives demonstration from experience; in two words, *fiat experimentum*: this is what common sense, when it has for its companion common honesty, prescribes; this is what gave immortality to *Lord Bacon*: be not either ashamed or afraid to take a leaf out of the book of Lord Bacon.

2. Next, as to remuneration in the shape of *emoluments*: for the pur-

(a) See *Westminster Review* for April 1831.

(b) For his management of the University of London, see *Examiner* for August 28, 1831.

pose of reducing them respectively to a minimum, employ *competition*: fear not to employ in this case that instrument, the application of which has the approval of everybody in every other case.

This you will do, unless the advice of common sense, in union with common honesty, be found or deemed too hard to be digestible.

As to emolument, is that same exclusively adequate instrument so startling, that blindly employed precedent is preferred to it? Look, then, to the case of the London Police Magistrates (*a*). In that case, four hundred a-year was sufficient for their emolument, and therefore would be for these Commissionerships, as has been elsewhere demonstrated by uncontroverted and uncontrovertible reasons; in addition to the demonstration afforded by the urgency of the applications at all times made for these same defunct Commissionerships.

So much for *general* suggestions. Would you wish to see them applied to particulars? proceed on, and read what follows:—

1. In the immediate judicatory, Judge one and no more.
2. So in the appellate judicatory.
3. Grades of jurisdiction these two, and no more.
4. Appeal to the Chancellor, not any.
5. Appeal to the House of Lords, not any.

To this sham security, exists there any person, by whom an efficient and honestly-meant security would be regarded as preferable? Of the sort which I would venture to propose to him, a model may be seen in the paper styled “The Parliamentary Candidate’s Declaration,” &c. Purposes of it, amongst others, these:—1. to furnish to the functionary, as far as it goes, a distinct comprehensive view of the field to which his labours will be to be applied; 2. to call in the aid of the *popular* or say *moral* sanction, for securing appropriate moral aptitude, against departure from the right path, in ways to which the power of the legal sanction is not applicable; 3. to present to the minds of *locators*, a standard to which they may make application of what they understand to be the characters of the several persons locable, whom the occasion offers to their choice. *Locator*, on the present occasion, the Lord Chancellor: persons *locable*, all persons in whose instance adequate ground has place for regarding them as endowed with sufficient *intellectual* and *active*, without objection on the score of *moral* aptitude.

Will it be said or thought, that for the Commissioners in question, a more *extensive* portion of *law-learning* is requisite, than for Police Magistrates? To any such supposition, I make answer—

1. Not more, nor yet so much. Of these Commissioners the jurisdiction is confined, in the branch of law called the *civil*, to a comparatively narrow corner of that field: and with the penal branch it has nothing, or next to nothing, to do: of the Police Magistrates, the jurisdiction spreads, in one way or other, over the penal branch in its whole extent, and over sub-branches in great variety of the *civil* branch.

2. For the possession of this so desirable an endowment on the part of his fee-sucking children, no real provision whatsoever, in and by this Act, does the noble and learned father of it make: for the possession of this branch of appropriate aptitude, no better nor other security does it provide than was provided in the *Police Magistrates’ Salary-raising Act*, by the Right Honourable Sham Reformer, in whose steps the Noble and Learned Lord, on this occasion at least, treads blindfold. Eating, or

(*a*) In “Official Aptitude Maximized,” &c. “Observations on Mr Peel’s Police Magistrates’ Salary-raising Bill,” anno 1825.

making believe to eat, a certain number of dinners in one or other of four large apartments called *halls*, followed by a relative fast kept holy during a certain number of years, is the security with which Sir Robert Peel, in despite of all my remonstrances, remained inexorably well satisfied: and when, in the form of a Bill, this same Bankruptcy Act was concocting, all the while, on the noble and learned table lay that work of mine, in which the absurdity and mischievousness of that same sham-security stands demonstrated.

3. On the occasion of his appointment, to *relevant* and appropriate law-learning no regard, or next to none, is ever paid. It is not the fashion. That which in this respect is the fashion, there has been occasion to hold up to view elsewhere in these pages. Of what is called *Equity*, what knew Lord Lyndhurst, when the charge of dealing out that high-priced commodity in so high a grade, was put into his hands? What knew of it Lord Brougham—what knew of it Lord Vaux—or either of them? What opportunities—what means—of such knowledge had they had—these noble and learned persons, any of them? No: considerations styled political, alias *party*, were, as everybody knows and says, the cause of choice in those cases; the like considerations, or private and personal benefit, or good-liking, have of course been, and will continue to be, in these.

Thus much for a *stay-stomach*, until the time is arrived for application made of the all-comprehensive local judicatory system: the business of this temporary and make-shift institution of a special judicatory for Bankruptcy business, will then be absorbed and merged into the common mass of the business of those several judicatories.

Noble and learned eyes! can you carry yourselves so far as to the other side of the Tweed? In Scotland, is there any Bankruptcy Court? No such thing. Any Insolvency Court? No such thing. And the assets of insolvent debtors—are they the less effectually disposed of for the benefit of creditors? No such thing.

In Scotland, had not the noble and learned father of this Act, if not the whole, the last and finishing part of his education? In his Advocate's shape, did not—in his Chancellor's state, have not already,—those same noble and learned eyes found need to carry themselves all over that part of the island? There sits moreover the Lord Advocate. Scotland—has not she a sort of Attorney-General, but with authority much more extensive than the English Attorney-General, in the person of that same Lord Advocate? to the Lord Chancellor, had no opportunity ever presented itself of hearing how matters stand, in this respect, from that same Lord Advocate? Exists there that man with whom he is in habits of closer intimacy, or more constant communication, than with that same Lord Advocate?

Appropriate *examination*; and, for ascertaining the maximum of the pecuniary remuneration needful, *competition*—competition among those by whom the examination has been undergone—competition, that operation by which, between *dealers* and *customers*, prices in general are settled:—these are the instruments by which, according to my principles, economy and official aptitude are secured, and made to dwell together in perfect amity. This, in both departments—the *administrational* and the *judiciary*: but in the judiciary in particular, these form no more than a part of the securities, which my Code has provided for appropriate aptitude in the judiciary department.

For the good people at large, when the fullness of time shall have been accomplished, is all this information designed:—all this information, the object of which is—so to manage matters, as to cause the interest of functionaries in all official situations, to be in exact coincidence with their

respective duties. As to learned Lords and Gentlemen, whose eyes are so pertinaciously closed against all such information by a compound of sinister interest, interest-begotten prejudice, and authority-begotten prejudice, where is the lever long enough to wrench them open?

To doctrines such as these, when will public functionaries in general, and law-learned Lords and Gentlemen in particular, lend a willing ear, and act accordingly? When the population of Newgate and St Giles's lend a like willing ear to a sermon having for its text "Thou shalt not steal," amend their ways, and act according to those words.

Alack a-day! a little more, and I should have forgot to acknowledge the oath—the security afforded by that phantasmagoric cable, with such care and punctuality provided for binding a functionary to his duty. Well, then, here it is. Not so much as one of all the whole three-and-twenty new functionaries—creatures of his Lordship's creation—not so much as one of them all is there by whom that same cable has not been, nor of the future contingent ones, by whom it will not have been swallowed.

In regard to qualifications and security, thus then stands the matter. For appropriate *intellectual* aptitude, we have the security composed of the *manducatory* and the *jejunal*, as above mentioned: for appropriate *moral* aptitude we have the *oath*: equivalent to which mockery, and instead of noxious, as that is, perfectly exempt and pure from all evil would have been the loyal song of *God save the King*; or, in learned language from the grammar of the royal school at Westminster, the harmonious couplet,

" Litera si præeat vocalis pura vocatur,
Ceu reus; impura est præeat si consona, ceu rus."

and here, in this same couplet with the word *pura*, as a gem set in it, might have been seen Morality, with her sister Intellectuality, hand in hand. Nonsense, so far as regards contribution to the end which ought to be kept in view, nonsense being the matter which that chosen *formula* is composed of, I propose this for a substitute to it, as being composed of less trashy nonsense!

Here ends the thread of these Observations: and here would end the whole publication, but for the demand for the reason of the change of the title from *Observations on the Bankruptcy Court Bill* to *Lord Brougham Displayed*.

Important as is this subject, there is one which is still more so: and that is his continuance in the office now filled by him. Law Reform or a Sham Reform—on him more than any other man depends the solution of the momentous question which of the two shall be our lot. Shall it then continue, or shall it cease to be, filled by him? This is an ulterior question; a question, on the answer to which it depends whether during our joint lives any fruit can, with any hope of success, be looked for by the labours in which my long life has the whole of it, found the greatest part of its occupation, and the dearest part of its hopes. Now, then, what is my situation? That of a man who finds imposed upon him the painful necessity of stopping the course of those same labours, for the purpose of doing what depends upon him towards conferring this benefit on his country and mankind.

Four occurrences present themselves as the most prominent of those which have concurred in the production of this distressing persuasion. 1. The Charity Inquiry Job. 2. The advocacy of Fee-gathering. 3. The opposition made by him to the Ballot. 4. His Education Jobs.

1. First, as to the *Charity Inquiry Job*.

For anything like a full and detailed examination of it, this is not the place: by a few general and leading Observations, the course adapted to

an instructive and useful examination of it may, perhaps, be seen to be pointed out.

1. So long as the judiciary system, with its procedure, continues to be what it is, not good but evil is what the inquiry, carried on as it is, not according to, but in contravention of, the *greatest-happiness* principle will have for its net product.

2. So enormous is the factitious expense of procedure in the judicatories called *Equity Courts*, in which this business would have to be and is carried on,—that, before it had proceeded any comparatively considerable length—any length capable of contributing effectually to its professed purpose—namely, the institution of a system of all-comprehensive national education,—parliament, the nation, and the treasury, would naturally, not to say necessarily, become impatient of it, and that in such sort, that, to prevent further effusion of the life-blood of the treasury, a bandage would be applied to it.

As to the patronage, the persons by whom the benefit of it has been reaped, are his learned brethren the profession, in every branch of it to which the business has given employment.

In the report which on this subject has been laid before the Honorable House (*a*), may be seen the amount of the business, with its profits, for which they stand indebted to this one of his institutions on that score.

Had anything better than power, patronage, and ambition-serving popularity—had, in a word, the happiness of the community been at the bottom of all this care of his,—would he, when the prospect of power and patronage had ceased, have turned his back upon this same charity business, and left it to deteriorate by neglect? No, surely. Now then mark well how he dealt with it.

1. Quantity of time left unemployed in the *business*, four months out of the twelve (*b*): so says an acknowledgment made by the Chairman of the Board—the person whose situation rendered it his interest to make the proportion of time employed in that same business as great as possible.

2. Quantity of time professed to be employed in the *journeys*, not more than four months out of the twelve (*b*).

3. Quantity of time professed to be employed in digesting the documentary evidence and drawing the reports thereupon made, the remaining four months—a quantity of time equal to that professed to be employed in the journeys and the elucidation of the evidence together (*b*).

4. Every member left at liberty to employ himself in his professional pursuits for any portion of his time, at pleasure—of the time he was to be paid for at the rate of 1500*l.* a-year at the public charge (so ordains the act); on the *Circuits* not excepted: actually so employed, these same functionaries one or more of them: one of them for and during a more or less considerable portion of his time occupied in the exercise of another office in *Ireland*—namely, that of *Commissioner of Irish Education* (*b*).

5. By loss or destruction of documents, through negligence or wilfulness, charities in unknown numbers left exposed to be extinguished.

6. No thought bestowed on the prevention of breaches of trust in this shape in time future.

7. For the preservation of the several documents constitutive of title, an act some years ago having passed, the fruit of his so-anxiously fostering care, the object of it carried into effect in the instance of no more than a few counties, and then left in the state of a dead letter (*a*).

(*a*) No. 361 : date of the order for printing, 8th May 1830: title, Court of Chancery.

(*b*) House of Commons paper, March 18, 1828, No. 225, intituled "Evidence taken before the Finance Committee, and the Return laid before the Committee in 1828, which were presented to the House upon the 24th day of June 1829.—John William Warren, Esquire, called in and examined."—Pp. 2 to 6.

Three several *modes* there are, in one or more of which it is in the power of the fee-gatherer to make additions—and, generally speaking, to an indeterminate and unlimited amount—to the quantity of the depredation committed by him by means of this instrument; *one* is—by addition made to the quantity of the written matter, in proportion to which the addition is allowed to be made; *another* is—by addition made to the *number* of the *occasions* on which the fee is allowed to be exacted; and a *third* is—by addition made to the number of *days* or other portions of time at which he is occupied, or supposed to be occupied, in that same quantity of business, be it what it may; thus *splitting* the whole time into a number of fractions—their distance from each other determinate and limited, or indeterminate and unlimited—for the purpose, and with the effect, of exacting a fee for each such particle of *time*; thus giving increase to the *expense* imposed upon the parties interested, as also to the *delay*, in proportion not only to the number of these same particles of time, but also to the distance between each of them: three modes—all of them so many *concealed* modes—over and above the *open* mode, by addition made to the amount of each fee so allowed to be exacted; of which last, the effrontery of it notwithstanding, examples are not wanting (*a*).

By the *quantity-enlarging* shape of the abuse, is produced the maleficent lengthiness of each portion of the Statute Book, in the existing state of it; and thence will be produced the obstruction which will of course be opposed to every proposal for the removal of it: by the other, the *time-splitting* abuse, the enormity of the factitious quantity of delay with which are loaded the proposed laws, termed *Private Bills*, throughout the course of their passage through Parliament.

By its *quantity-enlarging* shape, in conjunction with the utter absence of all classification and order in the disposition of the matter, is produced the impossibility a man is under of coming at the knowledge of the *rights* of the benefit of which, without such knowledge, he must be deprived; of the *wrongs* to which, but for such knowledge, he must, without remedy, remain exposed, at the hands of all other individuals; and the punishments which he must remain exposed to suffer by the hands of government: and, in short, to fill up the measure of maleficence, to this abuse, in conjunction with the leaving the rule of action in the shape of the imaginary sort of law called Unwritten Law, alias *Jurisprudential* Law, alias *Common* Law, alias *Judge-made* Law, is owing the non-existence of an all-comprehensive code.

On two achievements is based whatsoever can be done in the way of Law Reform—namely, appropriate *Codification*, and appropriate *Judiciary Establishment*, with its system of procedure. To the last of them his Lordship's implacable hostility is but too indisputable; it has already been held up to view: to the former it is but too probable, not to say certain—sinister interest, interest-begotten prejudice, and interest-begotten sympathy, join with consistency in calling for it at his hands. Before him has all along lain that volume of mine, in which the demand for codification and the demand for a new judiciary establishment, with its procedure code, are spread out in detail: of the latter what use has been made by him, may be seen by whosoever has the requisite curiosity and patience.

By all these jobs of his, he has stretched out the right-hand of fellowship to jobbers of all sorts, whose jobs are not of a magnitude too small to be included in such an alliance: giving thereby an invitation to maximize the number of the several jobs, the profit from each, and the quantity of

(a) See "*Indications respecting Lord Eldon*," in "*Official Aptitude Maxims*," &c.

the sustenance and life-blood of the community let out by every stab thus given to the constitution.

In his eulogium on education—in his “school-master sent abroad”—he may have seen (and who will say of him that he did not see?) the school-master sent abroad by him throughout all nations in the quality of *Collector of the Customs*, in the shape of praise,—to gather in the tribute of praise and popularity for his own behoof: laying it up in store in readiness to be applied to whatsoever purpose the turn-up of affairs should at any time present him with an opportunity of employing it to advantage. Actions are no bad interpreters of intentions. Yes, to whatsoever purpose: and already have we seen to what sort of purposes his treasure, in this shape, has actually been applied. “And by this service,” says some one, “has not great benefit been actually and already rendered?—rendered, *certainly to this country, probably even to others*: and, for this benefit, is not correspondent gratitude unquestionably his due?” *Answer*—Not altogether so assuredly: gratification, yes—gratification on our part; but *gratification* and *gratitude* are different things: cause for *gratification* is in proportion to *results*: but, cause for *gratitude* depends upon intentions. On the present occasion the question is—this all-needful benefit, shall it or shall it not be received by us with gratitude? And if, how great soever the benefit may be, the party for whose service the benefit was intended, was not ourselves but himself alone, what is the claim it gives him upon our gratitude?

Ballot—what shall I say of the ballot? what of his Lordship’s sentiments in regard to it? to the question whether the opinion, the wish, the exercise given by man to his power as and for his own, shall be the result of his own will, or that of another man—of a man who acts as a tyrant over him? whether such his act and deed shall be genuine or an imposture? whether, by hundreds of thousands, Englishmen shall remain subjected to no other option, than that of each man violating his own conscience, or suffering pecuniary loss to an amount to which there is no other limit than that of the whole means of his subsistence? In this one feature, as in a mirror, behold the frame of mind of this our self-professed reformist. (a)

After an attack made, and *thus* made, upon one of the most admirable members this country ever saw of the most highly talented profession—one of the most amiable men I can think of in private life, I now take this my last departure from the subject.

Well, then, this being the manner in which *I* deal by *him*, what is the manner in which *he* deals by *me*? and this, after having seen the first part of these same Observations. Often does it happen to him to speak of me; seldom in any other terms than such as are a mixture of affection and even more than respect; never in terms of the opposite description: to this effect is what it has been my good fortune to hear, from a variety of quarters—with what a mixture of surprise and gratitude let any one imagine. Had the thought of a fillip to a single individual who has thus shown how little he cared about it, outweighed, in my mind, one of the most important ingredients in the welfare of the most extensive empire upon earth, not to speak of “the rest which it inhabit,” I should have done otherwise; but, considering whom it has been written by, let any one judge, whether anything, that could be written with the *view*—the public and all-important view—these pages are written with, could be regarded as superfluous. JEREMY BENTHAM.

(a) In this my conception of his Lordship’s frame of mind do I stand alone?—of the contrary the following epigram will present a demonstration. It has for its

POSTSCRIPT.

AFTER the last word of this present work had been written, a book, which bears for its title *The Black Book*, was put into my hands by a friend, who had been witness to the writing of the pages of this work as it went on, and by whom the discovery had not been made before the day of his giving the information to me. It is inserted here, as another piece of evidence of the nature of that adduced in the preceding note.

“BROUGHAM, HENRY (*Winchelsea*), *Barrister at Law*.

“The political tendencies and acquirements of this member have been so often set forth, that it would be a waste of the reader's time to indulge in disquisition on so trite a theme. A strange fatality seems to attend every project to which Mr Brougham directs his efforts; no one has abounded in more useful suggestions, nor evinced greater and more searching powers in the exposition of abuses; yet it cannot be said he has originated and carried through a single measure by which the

author an official person, who has for his duty the reporting his opinion of certain official proceedings; in how great a degree the severity of the character given of his said Lordship in that flight of fancy, goes beyond that given of him by this discussion, in the giving of which I am now occupied, will be visible to every eye. By this severity two things will be demonstrated: 1. that this of mine is not singular; and 2. that, so far is mine from being so, that *one* person there is, whose qualifications are objects of respect to more than *one* even of his Lordship's devoted friends,—yes, one person, at least, there is, who even goes beyond me in severity.

(From *The Examiner*, of August 14, 1831.)

THE FATE OF A BROOM:

AN ANTICIPATION.

Lo! in corruption's lumber-room,
The remnants of a wond'rous Broom,
That walking, talking, oft was seen,
Making stout promise to sweep clean;
But evermore, at every push,
Proved but a stump without a brush.
Upon its handle-top, a sconce,
Like Brahma's, looked four ways at once;
Pouring on King, Lords, Church, and Rabble,
Long floods of favour-currying gabble;
From four-fold mouth-piece, always spinning
Projects of plausible beginning,
Whereof said sconce did ne'er intend
That any one should have an end:
Yet, still, by shifts and quaint inventions,
Got credit for its good intentions,
Adding no trifle to the store,
Wherewith the Devil paves his floor.
Found out at last, worn bare and scrubbish,
And thrown aside, with other rubbish,
We'll e'en hand o'er the enchanted stick,
As a choice present for Old Nick,
To sweep, beyond the Stygian Lake,
The pavement it has helped to make.

March, 1831.

community has been materially benefited. This is a very "lame and impotent conclusion" after a public life of great bustle and considerable duration.

"Mr Brougham's Exposure of the abuses of Charitable Foundations, by which he showed the Poor had been robbed of near Two MILLIONS of annual revenue by Bishops, Parsons, and Gormandizing Corporations, did him infinite honour; but nothing useful has resulted from the discovery of this mine of pious plunder. The Learned Gentleman suffered his bill on the subject to be frittered of all its usefulness and efficiency; the job got into the hands of Commissioners, who, with enormous salaries, have been perambulating the country for years, under the pretext of investigation; they have published thirteen folio volumes of reports, and have thrown part of the property into Chancery, but not a shilling appears yet to have been saved from the cormorants and applied to the uses for which it was originally intended. All this delay and cumbrous machinery might have been saved; a single bill for a general restitution, or a local inquiry by persons not interested, was all that was needed.

"I pass over the Honourable Member's Libel Bill, and his bill for Universal Education; they were both so ill concocted that they pleased no party, and came to nothing. The last project which has fallen under his paralyzing touch, is the London University, and even this great and salutary scheme appears either dead or struggling for life under the influence of his baneful countenance. What the Learned Gentleman chiefly desiderates, is more concentration of purpose; like water spread upon a plain, his great powers are lost by diffusion; it is true, such discursive irrigation may fertilize, for a season, an extensive surface; but it is too weak to turn a mill, or produce permanent and visible effects. Another cause which impedes the usefulness of this really worthy man, and creates misgivings among his friends, is the uncertainty of his *moral* and *political* organization: he is not gay and profligate enough for a Tory; he is too independent for a Whig partisan which doting faction never forgave him calling their late Grand Lama Ponsonby, "an old woman;" still he is often too circumspect and *personal* in his pursuits for a thorough patriot or reformer; and his late repulsive and snappish behaviour at Appleby shows that nature never intended him for a popular leader. These points are all exemplified in the Honourable Member's wiry and sinuous career, from his first introduction to Mr Pitt, through his curvettings with the Westminster Reformers, to his final and hopeless fixation in the Whig slough of despond.

"Leaving these general touches, I shall come to a subject on which Mr Brougham is entitled to unqualified praise; I mean his efforts in favour of popular education. In the promotion of this noble object his endeavours have been unceasing and invaluable; and he is the more entitled to gratitude, because it is a pursuit from which he can expect no personal advantage, while the benefits he may confer are incalculable. There is one point connected with the MECHANIC'S INSTITUTIONS, in the success of which he takes so deep an interest, to which I should wish to call his attention. It is a pity, I think, the conductors of them should so exclusively direct their attention to the diffusion of a knowledge of the merely *physical* sciences: without depreciating any branch of knowledge, it is not conceivable how the lot of the working classes can be bettered by an acquaintance with mechanics, acoustics, electricity, galvanism, and other branches of natural philosophy, which constitute the reiterated topics of institutional lectures. The miseries of society, in my opinion, result much more from moral and political causes than a want of physical knowledge and power. Nature has given to man fertile land, sun, and air, to produce his food, and it is the waste or misappropriation of the product of these—her almost spontaneous gifts—that chiefly creates ignorance, penury, and dependence.

"Political Economy is a science of general application; every one, as landlord, merchant, or workman, being interested in the laws which regulate rent, profit, or wages. It also elucidates the important relation between subsistence and population. Till this great problem is universally understood, we cannot look forward to any permanent improvement in the condition of the people. Physical science may augment our productive powers, new machinery may be invented, rail-roads may be constructed, and the application of steam extended: still the lot of the people will not be improved. Wages will be no higher, provisions no cheaper, the hours of labour no shorter; the only result being, that they will be *more numerous*, their dependent and necessitous condition remaining the same as before.

"Why, too, not have more frequent discourses on the medical art? It is lamentable

to observe how much misery results from ignorance of the human constitution—the properties of food—the regulation of air and exercise—and other means by which the health is preserved and the constitution invigorated.

“The foundation of laws and morals might be explained, and the connexion between these and individual and social happiness, would open a delightful field for eloquence and elucidation. History, especially of our own country, and, more particularly, that portion of it which refers to the rise of cities and towns, and the emancipation of the great body of the people from a state of worse than West-Indian bondage, would form an instructive inquiry. To these might be added geology, organic remains, and natural history; which would, I think, form popular themes; they would liberalize and expand the mind, abstract it from gross and vulgar pursuits, and create an appetite for intellectual research and disquisition.

“I have only one more suggestion to submit to Mr Brougham. I trust, as soon as the new Parliament assembles, he will move for the repeal of the 1 Geo. IV., c. 9, that act which restrains the sale of CHEAP PUBLICATIONS, by fixing the minimum of price at which they may be sold, and the smallest number of square inches on which a writer may circulate his ideas. This Vandal law was passed during the administration of that poor, illiterate, and short-sighted mortal, the Marquis of Londonderry. It is nothing less than a tax on the knowledge of the poor, and its injustice and iniquity can only be equalled by that which taxes the bread they eat, for the support of an over-grown aristocracy. Such a motion is required of Mr Brougham for two reasons; first, to evince the sincerity of his wish to enlighten the popular mind; secondly, as an atonement for a former error, when moving on one of his political tacks, he launched into declamatory invectives on the seditious and blasphemous tendency of the ‘twopenny trash.’ It is true, all the cheap publications were not conducted with ‘absolute wisdom;’ some of them were diabolical in their object, vulgar, violent, and un-English in the extreme; but along with these evils, considerable good resulted. They generated a taste for reading, inculcated a feeling of independency, gave the people a glimpse of their importance in the social scale, and, no doubt, sowed the seeds of that intellectual activity which promoted the establishment of the Mechanics’ Institution, and diffused a thirst for an acquaintance with natural and mechanical truth.”

The work from which the above has been extracted was published in October 1826; and it can hardly have escaped observation how prominently his Lordship’s deficiencies on the subject of the diffusion of moral and political knowledge have been subsequently developed, in connection with the Society instituted for Diffusion of Useful Knowledge, and also with relation to the Taxes on Knowledge.

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EXTRACT

FROM PROPOSED

CONSTITUTIONAL CODE.

CHAP. XII.—JUDICIARY COLLECTIVELY.

§ 5. *Number in a Judiciary.**Enactive.*

Art. 1. In a judiciary, number of seats nowhere more than one. As in an immediate judiciary, so in an appellate.

Ratiocinative. Instructional.

Art. 2. For reasons, see those which apply to the case of a situation in the administrative department. To the present case, they will, all of them, be found applying; and, if with any difference, with increased force.

Ratiocinative.

Art. 3.—I. To the reasons which apply to that case, add in this case, the additional control applied and information afforded, by means of the constant contestational discussion, with the assistance of advocates, at the pleasure of parties specially interested—and appeal, with like discussion and assistance, also at the pleasure of those same parties.

Ratiocinative.

Art. 4.—II. From any addition to number *one* in a judiciary, the only beneficial effect which can be expected, with relation to the ends of justice, is—that of a check to misconduct, and in particular to misconduct in those shapes, in which it is the result of deficiency in respect of appropriate *moral* aptitude on the part of the Judge first instituted: but against any such deficiency other and much more efficient securities are provided in abundance; as to which see § 32, *Judges' &c. Securities for Appropriate Aptitude*.

Ratiocinative.

Art. 5.—III. As to this same supposable *check*, weak and insufficient will it be seen to be. By *opposition* to his superior in rank and thence in influence, whether in authority co-ordinate or not co-ordinate, the inferior might *lose* the whole comfort of the official part of his life: by

acquiescence, no *loss* does he suffer in any shape, accidental circumstances of humour or interest excepted. No greater therefore than what to them respectively appears necessary to save themselves from positive censure at the hands of superordinates or of the public at large, and from being in their eyes as cyphers, will be the part taken by other Judges in whatever number superadded to the first.

Ratiocinative.

Art. 6.—IV. From the efficiency of the check thus applied to misconduct, through *moral* inaptitude, on the part of the *first chosen*, (call him the *chief*) Judge as well as from the value of any supplement capable of being made to his appropriate *intellectual* aptitude, a cause of defalcation may be seen in the *torpor* naturally produced for want of adequate motives for exertion, as above.

Ratiocinative.

Art. 7.—V. In this way it is that when two Judges are placed in the same Judicatory, with powers nominally the same, appropriate aptitude in its several branches is diminished, on the part of each, by the co-existence of the other.

Ratiocinative.

Art. 8.—VI. But (says an objector) in each of the three superior Courts of Westminster Hall, not merely one Judge is there, added to the chief, but no fewer than three, and of late days four: and, in any of them, is any such debility observable? *Answer*—No, surely: but why? Even because not one of them is there, who is not in the constant habit of acting in a state of *singleness*. Witness—constantly, chamber business; periodically, circuit business; incidentally, *Nisi-Prius* business: be they therefore ever so apt, no argument does their aptitude afford in support of *many-seatedness*.

Ratiocinative.

Art. 9.—VII. Another way there is, in which, by the allotment of a number greater than needful in each judicatory, or in a considerable number of the judicatories, the ends of justice will almost to a certainty be contravened; the expense necessary to the providing of judicatories in sufficient number, being thus rendered greater than government will deem itself warranted in allotting to the purpose: whereupon comes deficiency in the requisite number of judicatories, and, from that deficiency, to a greater or less proportion of the members of the community the effect of a *denial of justice*; and, to a yet greater proportion, that of increase of delay, vexation, and expense.

Ratiocinative.

Art. 10.—VIII. For, denial of justice is the effect, in so far as, by the length of journies to and from the judicatory, with the addition of the intervening demurrage, expence to an amount greater than can be defrayed, is imposed upon *suitors*, or necessary *witnesses*; and, the greater the length of those same journies and demurrage, the greater is the amount of whatsoever expense is on that account actually incurred.

Ratiocinative.

Art. 11.—IX. Suppose now a new set of judicatories instituted, in such number as shall be sufficient, but not more than sufficient, to secure

the community against all denial of justice from this cause: from the aggregate of these, deduct any number, how small soever; in this case, by the supposition, denial of justice in a proportionable degree has place.

Ratiocinative.

Art. 12.—X. Unhappily, scarcely in any country is the aggregate number of judicatories so great, as altogether to exclude denial of justice from this cause: the actual number being reduced below the relatively requisite number by the difficulty of providing for the expense.

Ratiocinative.

Art. 13.—XI. Suppose, for example, 600 the greatest number of Judicatories, for the necessary expense of which, provision can be afforded, and suppose this number sufficient, but barely sufficient, to prevent, as above, the denial of justice; this supposed, put an additional Judge, though it be but in *one* of the whole number of Judicatories, you make a defalcation of *one* from the total number of Judicatories, and thereby a proportionable addition to the length of *journeys* and *demurrage* in the instance of at least *one* Judicatory; and, to a correspondent amount, you produce denial of justice, together with increase of delay, vexation and expense, as above.

Ratiocinative.

Art. 14.—XII. But for whatever reason you make such addition of one Judge, in any one Judicatory, for the same reason should you make that same addition in every other Judicatory. Place then, in each Judicatory, instead of one Judge, two Judges, you reduce the total number of Judicatories to 300 instead of the number, namely 600, which is requisite to prevent denial of justice; place in each Judicatory, three Judges, you reduce it to 200, and so on: producing, by every such addition made to the number of Judges in each Judicatory, a correspondent unavoidable addition to denial of justice, together with still greater addition to delay, vexation and expense.

Ratiocinative. Instructional.

Art. 15.—XIII. Only by a still more abundantly productive cause, namely law taxes and law fees, official and professional, are these effects of supernumerariness of Judges, this denial of justice, together with aggravation of delay, vexation and expense, concealed from general observation.

Ratiocinative.

Art 16.—XIV. If, of two Judges either has, by means of corruption, or sympathy, or antipathy towards this or that individual, a sinister interest, which is promoted by delay,—he has it in his power not only to produce evil in that shape, to an indefinite extent, but to produce it without scandal; to wit, by propounding *doubts*: and, while in this way promoting the sinister interest, he may be acquiring the reputation of ultra ordinary moral aptitude, on the score of ultra anxiety to judge aright.

Ratiocinative. Instructional. Exemplificative.

Art. 17. If anywhere, in France for instance, beneficial effects in any shape are produced by multiplicity of Judges, the benefit belongs

not to Judicature, but to legislation ; and in the present case has no place (*a*). It consists in the feeble addition, which, in that case, may incidentally have come to be made to the so widely insufficient controul, applied by that constitution to the power of the Monarch : it consists in a sort of virtual temporary *negative*, exercised by the members of one of the judicatories—namely, the *parliament of Paris*,—an unauthorised and unacknowledged negative, exercised by them at their peril, and never without more or less of self-sacrifice. Under the original form of Government, the negative was applied *to the law itself, before* enactment : under the present form of Government, it can not any otherwise be applied, than in this or that individual case, *under the law, after* its enactment (*b*).

Instructional. Ratiocinative.

Art. 18. A Judicatory, with Judges more than one, is a school of insincerity and deception.

(*a*) The day on which this article and the next were written, was the 5th of December 1827.

(*b*) This mixture—this inconsistent and utterly indefensible mixture—of superfluity and deficiency—this consequent profusion of expense mixed with denial and delay of justice,—to what cause or causes shall its existence down to the present time be attributed ? *Answer*—To two causes : to the one of them, its *creation* ; to the other, its *preservation*. Cause of its creation, the rapacity of the red-hatted premier—*Cardinal Mazarin*, in the middle of the 17th century : shares in the money extorted under the name of *fees*, on pretence of rendering justice, being sold to as many as would pay for it : cause of the patience of the people under this load, the benefit experienced by them from the *barrier*, however flexible and feeble, opposed to absolute power, by the suspensive *veto*, applicable to each new law, by means of the custody of the books in which, antecedently to the recognition of its validity by the Judges on whom it depended for execution and effect given to it, laws were wont to be entered :—a barrier, which, at the first dawn of the first revolution completely vanished—the barrier itself, together with all need of it and all use of it.

Think now of the *single-seatedness* of all the high official situations belonging to the administrative department of that same government—in every instance, if not in *outward* appearance, at any rate in *reality* and effect. Think of the laud which has been claimed for it, has been bestowed on it, has been deserved by it, and continues to be most incontestably deserved by it ! From this same administrative department, turn now to the judicial. Behold there the quantities of money wasted : wasted in making correspondent purchases of bad judicature :—of addition made to probability of misdecision ; of certainty given to denial and delay of justice, as above, by the money taken from the mass—money which might have been employed in adding to the number of the judicatories—all of them single-seated. wasted thus :—and how ? *Answer*—Of the highest-paid Judges, the number not less than fifty-six times as great as it ought to be : out of the fifty-six, the salary of fifty-five, 18,000 francs each (750*l.*), thus miserably wasted.

After the demonstration thus published, of the maleficence of this mixture of profusion and bad judicature, suppose it continued,—to what end would it be continued ? *Answer*—To these two ends—1. To render it so much the easier to the king, as often as it may happen to be agreeable to him, on whatsoever occasion it may be most agreeable to him, to purchase, at the hands of the Judges, unjust judgments for his own use or that of a favorite or favorites of his. 2. At the hands of the deputies and of the peers, their votes in support of whatsoever bad *laws* it may happen to be agreeable to him to see enacted, as well as of all such as it would be otherwise than agreeable to him to see abrogated : for wherever no efficient test of, and security for, appropriate aptitude on the part of the *locatee*, is established and put to use, such is the effect of every addition made to the quantity of patronage.

I. As to *insincerity*. Be they, any or all of them, ever so unapt, in any or every point of inaptitude, each must behave to every other as if that other was the perfection of aptitude. Either this insincerity must have place, or continual bickering and mutual reproach must have place: hence discomfort to each, and in the eyes of the public, lowering of the estimation of every one. In this case the form in which the insincerity has place is that which is called *hypocrisy*.

II. As to *deception*. Here then from the highest and most influential appropriate authorities, universally, continually, and unremittingly delivered, is a certificate, constantly and universally false, yet never contradicted. In such a state of things how should general deception fail to be the consequence? To what extent may not relative inaptitude, unbounded in degree, have been in consequence regarded as appropriate aptitude alike unbounded in degree; and in consequence, in a correspondently unbounded degree, contravention of the ends of justice have had place in the seats of Judicature! (a)

(a) 1. Look now to *Matchless Constitution*. Judges, always four in number, now of late five, paid for doing in this case badly that which (as has been seen above) would be done much less badly by *one*: the expense to the public consequently thus far *quadrupled*—now *quintupled*.

2. Of course this observation applies solely to that part of the business which is previous to, and exclusive of, that which is called the *trial*, and which previous part, if the ends of justice were the objects, would not be done at all.

3. Portions of the business, in which this waste of dearly paid labour has no place, are—1. The business called the *trial*, in which the elicitation of evidence is performed in the best mode. 2. That part which is called the *chamber business*, and which is carried on—the whole of it—under a veil of secrecy—no persons being present, other than the professional lawyers—men, whose interest it is that the ends of justice should be in as high a degree as possible contravened,—misdecision, expense, delay, and vexation, maximized.

4. Here, then, on the part of the law, added to the reproach of *inaptitude* is that of *inconsistency*: the mode of performing the business in full Court—all four, now all five, Judges present—not justifiable, unless the mode of doing it at chambers is condemned; the mode of doing the business at chambers not justifiable, unless the mode of doing it in Court is condemned.

5. *Three* is the number of these judicatories, three the number of the instances in which the *superfætation* just described has place.

6. Peculiar to those judicatories, in and by which the species of *pseudo-nymia*—of sham and Judge-made law—styled *Common Law*, in contradistinction to *Equity*, is administered, is this *quadruplicity*, now *quintuplicity*, thus preferred and substituted to *unity*: in no instance, in which *Equity* is the name of the drug which is administered, has it place: not in any one of the three superior judicatories, so strangely piled up one above another, styled the Master of the Rolls' Court, the Vice-Chancellor's Court, and the Lord High Chancellor's Court: nor yet in any one of those inferior judicatories in which the Judge is styled a Master in Chancery.

7. Nor yet is this quadruplicity sufficient in all cases. In certain cases it is trebled: twelve the number of the Judges: the Judges of the three Common Law Courts being packed together for this purpose. And those cases in which the demand for appropriate intellectual aptitude is regarded as being at a maximum—what are they? They are mostly of a sort in which no man, in whose instance the most common sense has place in union with common honesty, would regard the case as a fit one for the being argued: when, for instance, the question is whether a man shall be deprived of his right because a lawyer's clerk has made a mistake, unintentionally or intentionally, in the writing of one of the letters in a word.

8. To the three *Puisne* Judges (pronounced *Puny*, meaning *Junior*), any one

of several advantageous substitutes might be proposed: any one, or, for choice, all of them. On an occasion on which the opinion of all four are delivered *seriatim*, after the chief has delivered his opinion, "*I am of the same opinion*" are the words commonly pronounced by each of the three Puisnes. If, then, it be necessary that for this purpose on this occasion, words should be employed, *animated* substitutes would be necessary. On this supposition, the substitute would have to belong to that class of animals in whose instance *wings* with *feathers* are substituted to arms with hands: a parrot, for example, a mino, or a starling. But when the import is not over complicated, expression may be given to the opinion by visible as well as by audible signs. Arrayed in Judge's robes might be the figure of a man in *wax-work*, or a painter's *Lay-man*; and, wires in hand, the part of the puppet-show-man might be performed by my Lord Chief Justice.

9. Of the whole four, the only one in whose instance any real demand for rationality, or what passes for such, has place, is the Lord Chief Justice;—for, being always a *Lord*, and generally a *Peer*—a member of the House of *Lords*—sometimes even a *Cabinet Minister*—all the authority that depends upon opinion, all the influence, is to him a subject-matter of exclusive property. On ordinary occasions, by him is said whatsoever is said: by the other learned persons either nothing at all is said, or the sort of something which has just been mentioned.

10. "I have *not* been consulted, and I *will* be heard"—Some sixty-seven years ago did the author of these pages hear Willes, Puisne Judge of the Court of King's Bench, utter a declaration in these very words, in the ears of an astonished audience—not the least the astonishment of the Lord Chief Justice—Murray the great—first of the Earls of Mansfield—against whose authority rebellion was thus committed by a speech thus audacious and unprecedented.

Of the act of rebellion by a Puisne Judge against the authority of his chief—of this enormity and the astonishment produced by it, mention has been made above. Of this astonishment, what was the cause? *Answer*—It was neither more nor less than the intensity of the habitual servility, and the uninterruptedness of the habit.

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EXTRACT
FROM PROPOSED
CONSTITUTIONAL CODE.

[Reference being made to this paper in § 5, *Number in a Judiciary*, as above, page 2, it is here subjoined. As to the former sections to which it will be seen referring, the space occupied by them would be too great to admit of their being inserted here.]

CHAP. XII.—JUDICIARY COLLECTIVELY.

§ 32. *Judges' &c. Securities for Appropriate Aptitude.*

Enactive. Expositive.

Art. 1.—I. *Securities anterior, or say antecedential.* By securities *anterior*, understand securities which apply to the conduct of the functionary, antecedently to his entrance upon service, and forming so many securities for his appropriate aptitude, each of them in one or more or all of its branches, with reference to his situation. They are as follows:—

I. Exclusion put upon all candidates for the situation, but such as, in that of Judge Depute, have given proof of appropriate aptitude in all shapes, by the exercise of the same functions, under the superintendence of a *principal Judge* (a).

II. So, upon all who have not stood the test of irreproachableness, afforded by subjection to the *interrogative scrutiny*, to which a candidate is subjected, at the hands of all *actors* who choose to apply it, in one or more judicial *theatres*. See § 2, *Actors, &c.*

III. So, upon all persons who have been practitioners in the profession by which men are habituated to the defence of wrong, and to the giving the utmost effect in their power to assertions seen by them to be false. See § 22, *Judges, &c., Locable who*: and Ch. xxiv. *Professional Lawyers*.

Thus will these three securities be employed, so soon as men exercised, in the situation of Judge Deputes, in the sole endeavour to promote justice,—without the practice of falsehood, because without need of it, or benefit from it,—have been formed.

IV. The obligation contracted by the utterance of the Judge's *inaugural declaration*, antecedently to entrance into office; and the sense of *responsibility* increased in proportion to the *publicity* of it. See above, § 29, *Judge's Inaugural Declaration* (b).

(a) This security (it will be seen) cannot have application till from and after the commencement of the *consummation* period, as per § 28, *Judges, &c. Locable who*, art. []; or as early as may be in the course of the *preparation* period, as per that same section, art. [].

(b) For a model of an instrument of this kind, adapted to the situation of member of a legislative body, see above, Ch. vii. *Legislator's Inaugural Declaration*.

Enactive. Expositive.

Art. 2.—II. *Securities concomitant.* By securities concomitant, understand securities applying to the conduct of the Judge during his continuance in office. They are as follows :—

V.—I. The interdiction put upon all emolument, other than that which, in the eyes of all men, stands attached to the office by law. See above, § 23, *Remuneration*.

VI.—II. In particular, interdiction of all emolument, increasing in amount with the increase, in length and number, of judiciary operations and instruments, at the expence of suitors.

VII.—III. *Single-seatedness* of the judicatory: thence, integrality and undividedness of whatever responsibility, legal or moral, stands attached to the conduct of the functionary, in the exercise of the duties of this his office. See above, § 5, *Number in a Judicatory* (a).

VIII.—IV. To the Quasi-Jury with whom he may have to act, no share given in the exercise of any imperative function: thence to the Judge, no such means of exonerating himself from responsibility. See Ch. xvi. *Quasi-Jury*; § 3, *Functions*.

IX.—V. In the eyes of all persons present as actors in the judicial theatre, the constant exposure of the tenor of the inaugural engagement, as above. See above, § 26, *Judge's Inaugural Declaration*.

X.—VI. Of his attendance at the seat of duty, the constancy secured, by the connection established between attendance and the receipt of official pay. See above, § 23, *Remuneration*.

XI.—VII. So, by the individual service calendar, as per § 28, *Locable, who*.

XII.—VIII. To every act of his the maximum of publicity secured at the time of performance, by the encouragement given to attendance, on the part of the suitors in other suits, and the people at large, waiting to be heard as suitors or witnesses in the character of Judicial Inspectors. See ch. xvii. *Judicial Inspectors*.

XIII.—IX. So, by the obligation, imposed on persons designing to become professional lawyers, to attend in the inspectors' compartment in the character of students, during their noviciate. See Ch. xvii. *Judicial Inspectors*; and Ch. xxiv. *Professional Lawyers*.

XIV.—X. Continuance and perpetuity given to the security for appropriate aptitude, by the *general register*, in which entry is made of every thing said, as well as of everything done, by a Judge, in the exercise of the functions belonging to his office; together with the circumstances on which the propriety or impropriety thereof depends. See Ch. xxi. *Immediate Registrars*, § 1 to 5.

XV.—XI. So, of everything else in any way material, of what is said or done by him, together with any such complaints relative thereto as any other actor in the judicial theatre may choose to make, to the Appellate Judge or Justice Minister, by means of the *Incidental Complaint Book*. See above, § 18, *Incidental Complaint Book*.

XVI.—XII. Interdiction of all clandestine and seductive communication of parties and their connections with the Judge, by the obligation

(a) For reasons applying to this topic, in the case of officers belonging to the Administration Department, see Constitutional Code, vol. i., ch. ix. *Ministers Collectively*, § 3, *Number in an Office*.

CH. XII. § 32, *Securities for Appropriate Aptitude.* 3

imposed on him, of making public all such communications. See above, § 15, *Secret Intercourse obviated.*

XVII.—XIII. Obstacles opposed to clandestine communication between the Judge and any other actor on the judicial theatre, by the adaptation of the structure of the theatre to this purpose. See § 34, *Justice Chambers.*

XVIII.—XIV. In case of aberration on his part from the line of rectitude, exposure to amicable monition at the hands of the Government Advocates. See Ch. xviii. *Immediate Government Advocates*; and Ch. xix. *Government Advocate General.*

XIX.—XV. So, at the hands of the Eleemosynary Advocate. See Ch. xix.

XX.—XVI. So, to accusatory information at the hands of the Government Advocate, in case of flagrant misconduct, on pain of imputation of complicity. See Ch. xviii and xix.

XXI.—XVII. So, at the hands of the Eleemosynary Advocate. See Ch. xx.

XXII.—XVIII. So, at the hands of every Quasi-Juryman. See Ch. xvi. § 3, *Functions.*

XXIII.—XIX. So, at the hands of any other actor on the judicial theatre; though in this case without such imputation in case of omission. See Ch. xii. § 18, *Incidental Complaint Book*, and elsewhere.

Enactive. Expositive.

Art. 3. III.—*Securities concomitant having relation to connections.*—By securities concomitant having relation to connections, understand securities operating in a more particular manner as securities against seduction by connections dangerous to moral aptitude. They are as follows:—

XXIV.—I. Provisions concerning *migration*: interdicting the continuance of a Judge, in any sub-district, or say immediate Judicatory for so long a term as four years. See above, § 17, *Migration.*

XXV.—II. In case of suspicion of adverse partiality,—facility thereby afforded to a person having demand for judicial service, to substitute, to the supposed adverse a presumably impartial, because unknown, Judge, on condition of waiting for the migration time of this same supposed adverse Judge. See above, § 17, *Migration.*

XXVI.—III. In pursuance of the same principle, provisions for obviating the danger of undue connection between the Judge, on the one part, and the *Government Advocate* and the *Eleemosynary Advocate*, on the other: namely, by preventing the times and places of migration, in their cases respectively, from coinciding with those in his case. See above § 17. *Migration.*

XXVII.—IV. Provision for the constantly public exhibition of the state of the Judge's family connections: namely, by means of a table kept hanging up before the eyes of all whose business brings them to the Judicatory. See above, § 16, *Partiality Obviated.*

XXVIII.—V. Not only *liberty* to all suitors apprehending injury from sinister connection on the part of the Judge, but positive *invitation* to put to him, in open Judicatory, questions having for their object the bringing any such connection to view. See above, § 16, *Partiality Obviated.*

XXIX.—VI. Provisions, having for their object the preventing the principal Judge, from accomplishing any sinister purpose by the hands of any *Depute* of his. By the removal of the suit, from the cognizance of a de-

pute, to that of the principal, or *vice versa*, the suspicion and responsibility may thus be applied to its most proper object. See Ch. xiv. *Immediate Judge Depute permanent*.

XXX.—vii. In a case, in which the Judge has a known personal interest,—provision for transferring the cognizance, from the Judicatory of the sub-district in which he is Judge, to another Judicatory in the same district. See above, § 16, *Partiality Obviated*.

Enactive. Expositive.

Art. 4.—IV. *Securities subsequently, or say ultimately, applying and operating*.—By securities subsequently operating, understand operating by the application of a corrective remedy to injustice, regarded as as having been already sustained, at the hands of the Judge. They are as follows:—

XXXI.—I. *Virtual* appeal, from every depute to the principal Judge. See Ch. xiv. *Immediate Judge Deputes permanent*, and Ch. xv. *Immediate Judge Deputes occasional*.

XXXII.—II. *Virtual* appeal, from every Judge, whether principal or depute, to another, or the same Judge acting under the check applied by the authority of the Quasi-Jury. See Ch. xvi. *Quasi-Jury*.

XXXIII.—III. Appeal, under the name of *appeal*, from the immediate to the Appellate Judicatory: as per Ch. xxii. *Appellate Judicatories*.

XXXIV.—IV. In the case and in favour of suitors destitute of the pecuniary means, provisions, having for their object the rendering the right of *appeal* the more effective, by furnishing a supply:—namely, either by voluntary contributions, or by mulcts for insincerity on the part of litigants, or by both together: and, by the publicity and cheapness of the whole system, the facility afforded for the publication of cases of extraordinary hardship, through the medium of the press. See above, § 13, *Justice for the Helpless*.

XXXV.—v. So, institution of *Eleemosynary Advocates*. See Ch. xx. *Eleemosynary Advocates*.

XXXVI.—vi. Dislocability of the Judge Immediate, by the Justice Minister. See above, § 30, *Judges, &c. Dislocable, how*.

XXXVII.—vii. So, by the legislature. See above, § 30, *Dislocable, how*.

XXXVIII.—viii. So, by a section of the constitutive authority; namely, by the majority of the electors of the sub-district. See above, § 30, *Dislocable, how (a)*.

(a) Of course, not applicable to the form of government as at present established in England.

Hereupon, in the Constitutional Code, vol. iii., will follow the correspondent sets of securities applying to the several situations of the several other judiciary functionaries of the magisterial grade: namely, 1. Immediate Judges Depute permanent: 2. Immediate Judges Depute occasional: 3. Government Advocates 4. Government Advocate General: 5. Eleemosynary Advocates: 6. Immediate Registrars: 7. Appellate Judges: 8. Appellate Judiciary Registrars. But Judges being the only functionaries here in question, the matter belonging to these functionaries would have been superfluous here.

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SPEECH of LORD CHANCELLOR
headed Court of Chancery,
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